Elements of Ethics

Davis

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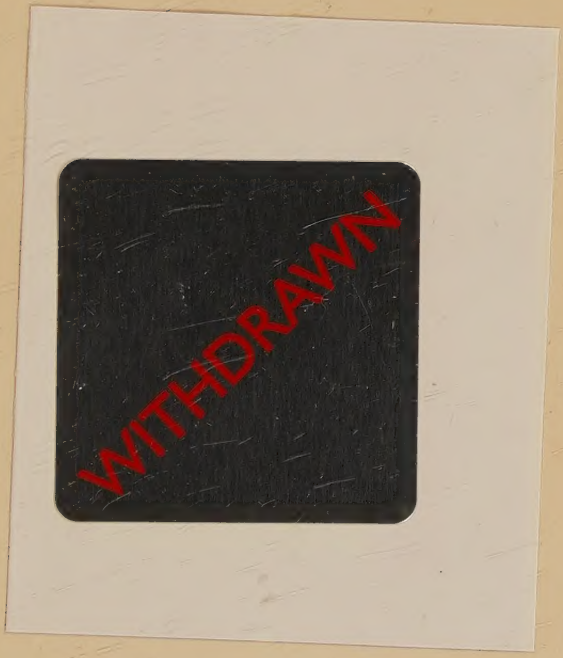

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ELEMENTS OF ETHICS

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Τρέφονται πάντες οἱ ἀνθρώπειοι νόμοι ὑπὸ ἑνὸς τοῦ θείου· κρατέει γὰρ τοσοῦτον ὁκόσον ἐθέλει, καὶ ἐξαρκέει πᾶσι καὶ περιγίνεται. — HERAKLEITOS

WITHDRAWN

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PREFACE

THIS treatise is intended for readers who feel the need of a simple, direct and comprehensive theory of morals. Also it is designed to serve as a handbook in institutions for higher education, where the subject of ethics is usually offered to hearers who, though already well advanced in a course of liberal studies, are presumed to have no acquaintance with this branch of philosophy. My experience in teaching it has led me to give such pupils primarily a rounded scheme, postponing an examination of the various and often conflicting views of philosophical moralists. Accordingly, in this elementary treatise, I have simply presented my preferred theory, starting from a principle, proceeding logically in the development of a complete system, and indicating cursorily many practical applications.

The preparation has been long and diligent. I have been in search of truth, glad to receive light from any source, and have now summed the results of my reading, thinking and teaching for many years in what is here offered to my fellow-teachers, hoping it may be suited to their wants, and aid them in imparting high ideals and shaping noble characters. Naturally I am solicitous that my work should be well received and approved, but whatever judgment be finally passed upon it, I shall have been conscious of sincere desire and earnest endeavor to reach and teach sound doctrine. This task finished, I shall hardly undertake another, but rest in the hope that what is now done shall be found

well done, proving a step toward truth in philosophy, and a help toward righteousness in life.

An apology is perhaps needed for overstepping bounds with so large a bundle of annotations; which, since they are not at all essential to unfolding the theory, might have been omitted, and may be overlooked. This desultory collection of citations from authorities, of quotations from general literature, of discussions on minor points, together with whatever occurred to me as illustrative, constitutes in some measure a variorum, an anthology. I feel quite sure that the scholarly reader will be pleased to see the very words of eminent writers, that the earnest student will be glad to have side-lights and finger-posts on the way, and that neither will be offended if here and there he stumble on an enlivening trifle.

Also I apologize for the marginal references to my other works, "The Theory of Thought," "Elements of Deductive Logic," "Elements of Inductive Logic," and "Elements of Psychology." As they together with this essay form a connected series, the reference from one to another avoids repetition of statement, yet preserves continuity of treatment.

Acknowledgments are due to Professor Collins Denny of Vanderbilt University, once my pupil, now my peer. By his encouragement the work has been accomplished, by his critical revision emended, and by his thoughtful suggestions enriched.

NOAH K. DAVIS

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Ὅσα ἐστὶν ἀληθῆ, ὅσα σεμνά, ὅσα δίκαια, ὅσα ἁγνά, ὅσα προσφιλῆ, ὅσα εὔφημα, εἴ τις ἀρετὴ καὶ εἴ τις ἔπαινος, ταῦτα λογίζεσθε.

ELEMENTS OF ETHICS

PROLEGOMENA

I. PSYCHOLOGICAL

§ 1. Before undertaking an inquiry into the principles of Ethics and their chief consequences, it is needful to examine, in a special way, the constitution of the human mind. The whole doctrine of morals concerns intelligences that are sentient and free, and is derived from their nature and relations. A preliminary survey of this ground consists in a specific study of human nature, in order to a study of human relations. The former is a psychological inquiry, and to it we at once proceed.

Mind is conscious substance. The consideration of substance may be omitted, and mind regarded as merely a complement of conscious activities, the knowing and feeling, desiring and willing. These are modes of consciousness, the universal characteristic of mental activity. They are posited as generic powers of mind. Each is subdivided into certain specific powers. The faculty of knowing, or cognition, is subdivided into intuition, memory, imagination, and thought. The intuitive intelligence is empirical and pure. Empirical or sensuous intuition is perception. Pure or non-sensuous intuition is pure intellect or reason. Pure reason is speculative and practical.

This distribution of mental powers, together with the explication now before us of some of their specific functions,

is a logical treatment of facts of consciousness in accord with approved introspective psychology.[1]

Let it be observed that a power, in its most general sense, is simply a possibility of change. Possible mental changes, known by experience, are classified as powers of mind. These are called mental capacities and faculties, the one denoting power to be changed, to receive by impression, the

[1] An elaborate discussion of the mental powers, according to the foregoing distribution, may be seen in my *Elements of Psychology*. For a concise statement of the distribution itself, see *idem*, §§ 71–78. For its ground, see § 79. For power, see § 53. The "New Psychology" discards this classification, and on various grounds proposes some other. Wundt, in his *Human and Animal Psychology*, § 1, p. 4, says: "Wolff is the originator of the so-called theory of mental faculties which has influenced psychology down to the present day. This theory, based upon a superficial classification of mental processes, was couched in terms of a number of general notions, — memory, imagination, sensibility, understanding, etc., — which it regarded as simple and fundamental forces of mind. It was left for Herbart, one of the acutest thinkers of our century, to give a convincing proof of the utter emptiness of this theory." Four pages beyond, however, Wundt speaks of "mind and the principal mental functions . . . sense, feeling, idea, and will," also of "our experience of sensations, feelings, and thoughts," and further on, p. 17, he says, "we are undoubtedly able to pass judgment." This is quite enough to bring us together; for by powers, faculties, capacities, we mean precisely functions, neither more nor less, and as to their logical distribution, we shall gladly accept a new one so soon as it is settled and proved superior. Meantime we are persuaded that the names of the various faculties or functions, which have prevailed in science from the time of Socrates until now, and the distinctions, which are so embedded in all Aryan and Semitic languages that even their critics necessarily use them, are sufficient for our present purpose, readily understood, and not likely to pass away at the wave of a wand.

A disciple of Wundt says: "Association of ideas, thinking, reasoning, . . . used to be considered as separate faculties of the soul, and as showing the mind doing different things. But this view is now completely given up . . . mind does only one thing . . . that one thing is combining." But this is simply a question of the logical reduction of functions to a *summum genus*. If it be shown that they are all merely modes of combining rather than modes of consciousness, a new reduction to unity will have been attained, a scientific modification of the science. But such reduction to a genus does not erase the distinctions among species.

other denoting power to change, to impart by expression. The further distribution, particularly of the cognitive faculties and capacities, is made, not with reference to differences discerned in the mental action and reaction, but with reference to differences in the objects cognized. The mind responds to the action upon it of objects greatly differing in kind, and its reactions are classified as different modes of knowing. The feelings, desires, and volitions correspond to the cognitions on which they are severally conditioned, and are classified accordingly.

Thus the many variations in conscious activity are originally determined objectively, and are merely various modes of consciousness.[1]

§ 2. Pure intuition is the immediate cognition by reason of a pure idea or necessary truth discerned on some empirical occasion, and abstracted. Such are the ideas of space and time, and the principles of contradiction and causation. These are speculative. Likewise, on the occasion of a personal action, pure reason discerns that it has moral quality, that it is either right or wrong. This implies an abstract intuitive principle marking the distinction, which principle takes the form of an imperative, enjoining the right and forbidding the wrong. In this practical form it is recognized as the moral law. We identify the practical reason with conscience, and define conscience as pure reason discerning moral law.[2]

Thought, or the logical faculty, makes inferences from the data of intuition. When it subsumes a special case, and concludes a class of actions, or a particular action, to be right or wrong, this is moral judgment.[3] A moral judgment,

[1] See *infra*, § 106.

[2] The matter here simply stated is examined *infra*, § 43 *sq.* See also *infra*, §§ 58–60.

[3] Both intuitions and inferences are judgments; see *Elements of Psychol-*

then, is a deduction from the moral principle or law, as an ultimate major premise, to precepts of less generality, and thence to particular cases of obligation. The ultimate major is purely intuitive; the minor is usually empirical in character. The process is strictly logical, requiring only correct inference. It does not differ in its forms from the exercise of thought on other matter, as in Economics, and is distinguished as a moral judgment solely with reference to its matter, which is ethical.

§ 3. Feelings are correlative to cognitions; that is, they attend cognitions, coexist with them, and correspond to them. There are three classes: sensations, emotions, and sentiments. Sentiments are divided into sensuous and pure; and pure sentiments are subdivided into intellectual and moral. Only the latter call for present consideration.[1]

The basis of all moral sentiment is the cognition of moral law by conscience. The vast, weighty and all-pervading feeling of moral obligation, or sentiment of duty, correlative to conscience, may be taken as generic, as implying the moral sentiments generally.

Because of his relation to moral law, every person has moral worth or dignity. The sentiment which the contemplation of this worth inspires is respect. Positive respect is felt for persons whose habitual conduct conforms to moral law; disrespect for those who disregard it. A show of undue disrespect excites indignation, reasserting worth. The consciousness of one's own dignity and observance of the law inspires self-respect, a sentiment quite distinct from pride and vanity, but consistent with humility or the sentiment of subjection to the law. The opposite feeling, arising

ogy, § 212. Throughout the present treatise, however, we shall use the unqualified term judgment, and the phrase moral judgment, in the specific sense of logical judgment or inference, as distinguished from intuition.

[1] See *Elements of Psychology*, § 231, and § 254.

in view of what one is and does in contrast with what he ought to be and do, is self-abasement or humiliation.

Respect becomes reverence when a person's character and conduct are seen to be an embodiment of moral law. The omniscience and omnipotence of Deity excite our highest admiration and awe; but only before the white heat of his holiness do we feel reverence, deepening into veneration and adoration.

§ 4. Another class of moral sentiments relates more especially to particular personal actions. When the agent is some other person, then, according to my judgment on his action, I experience a sentiment of approbation or disapprobation, exciting a disposition to reward or punish him. When the agent is myself in conscious action, then, according to my judgment on my own act, I experience self-approbation or self-condemnation, self-reproach, shame, remorse, together with a sentiment of ill desert that sometimes prompts a self-surrender to justice. The latter sentiments, while compatible with pride, are inconsistent with self-respect.

The sentiments of approbation and disapprobation are marked as pleasant and painful. There is probably no feeling more pure, more delicate and delightful than self-approbation. Self-condemnation, on the contrary, is always painful, and when it deepens to remorse, becomes intolerable. Thus these sentiments are a natural reward and punishment for right and wrong doing.[1]

§ 5. Desire is a conscious activity marked by a want implying an impulse or tendency toward an object seemingly fitted to the want. This object is quite commonly called the object of desire, but strictly and properly it is an object of cognition. For, in order to desire, there must be a co-existing cognition of an object, which object being known and judged

[1] This point is considered *infra*, § 50.

suitable to the want comes to be desired. Thus desire is conditioned on cognition.[1]

A feeling correlative to the cognition is also a condition precedent to desire. Notwithstanding the intimacy of this relation, which has caused confusion, feelings and desires should be clearly set apart. The former are characterized by pleasure and pain; the latter by want, a state of unrest which must be distinguished from pain, implying an impulse leading to satisfaction which must be distinguished from pleasure. Certain feelings, pleasant or painful, excite desire, certain others attend it, certain others arise on its gratification; but these should not be confused with the desire. For desire has its own distinctive mark, a want, this being absent from feeling. Also the notion that desires are states of pain, and their satisfaction pleasure, is contrary to the facts that the disquietude of desire is often attended by highly pleasurable feeling, as in the enjoyment of many kinds of pursuit, and that quite often a satisfaction earnestly sought is attended by painful feeling, as in the infliction of punishment.

Desires are distributed as the appetites, which have a physical basis, and are typified by hunger; the appetences, which are purely psychical, as desire for continued life, for pleasure, property, knowledge, power; and the affections, also purely psychical, as love of kindred, friends, country, mankind, God. The appetites and appetences crave, or impel to take; the affections bestow, or impel to give. There is also a series of opposites called aversions.[2]

§ 6. Desires often conflict; that is, the gratification of some one is incompatible with the gratification of some other.

[1] This is a real condition, that is, a condition of realizing, or of the reality, and should be distinguished from the causal condition and the logical condition. It is *conditio sine qua non* or *necessitas antecedentis*, that which must be in order that the other may be. See my *Elements of Deductive Logic*, § 110, for several senses in which the term condition is used.

[2] See the discussion in *Elements of Psychology*, § 255 *sq.*

Conflict occurs between members of the same class, but more notably between members of different classes. In general there is opposition between the craving and the giving desires, between interest that seeks to gain for self, and love which seeks to give out from one's own resources what may benefit another. Hence there appears a need for some controlling principle. It is found in the impulse to duty, the desire to do right, which by its nature is fitted to subordinate and regulate all other desires.

That this moral impulse is in every human mind becomes evident on the following considerations: *First*, the origin of any impulse to right action is unaccountable, if not native.[1] If native, though often too weak to be effective, it is universal. *Secondly*, consciousness testifies that there is ever an impulse to do right rather than wrong, even when contrary desires prevail. *Thirdly*, the moral law discerned by conscience is universal; its authority is directed to the will of every person, commanding right action. But, since any exercise of will is conditioned on desire, the behest of moral law would be fruitless, were there not in everyone an impulse to obedience complementing conscience.

Normally the relation of the moral impulse to the other desires is that of supremacy. This is evident from its direct connection with the supreme law, the moral law, from whose authority it derives its force. When impelled in diverse directions by the appetites, appetences and affections, the moral impulse urges us to the course indicated by moral

[1] The hypothesis of evolution, "The Natural History of Morals," is proposed to explain otherwise its origin. The moral impulse is supposed to be evolved from the natural inclination for pleasure and repugnance to pain, and thus conscience is selfish prudence, merely refined. But we observe that even in enlightened society highly cultured men often recognize as duties acts that are painfully repugnant, and as immoralities many that are highly pleasurable. Surely a morality evolved from pleasure and pain would, on the contrary, condemn the severe virtues, and approve licentious enjoyments. See Darwin's *Descent of Man*, ch. 3; and *infra*, § 20, note.

judgment as in accord with moral law. Like conscience, this impulse is not concerned with the particular matter of actions, but is simply regulative, impelling to compliance with the judgment. A will wholly good always yields to the moral impulse. That we so often disregard it shows that our will is not wholly good. That, nevertheless, we so often do right, is chiefly because subordinate desires frequently coincide with and reënforce the moral impulse. Moreover, the moral impulse incites us to observe the moral quality of particular actions, and to search for it when not evident. The observation and search is effected by the intellect, and issues in a moral judgment. If the intellect were perfect, and the moral impulse had force conformable to its function, there would be no wrong doing.[1]

§ 7. Volition or will closes the circuit of the generic powers. It is the faculty or activity in whose exercise mind chooses between alternative actions conceived as possible, and strives accordingly to modify its own state merely, or to superinduce muscular movement.

Volition, like cognition, relates to an object. The object of cognition is a fact, something to be known; the object of volition is an act, something to be done. The normal aim of cognition is truth; the normal aim of volition is duty. Truth is the contingent property of a proposition; we examine it, and if found true, believe it. Duty is the contingent property of an action; we examine it, and if found due, approve it. Logic states the laws of thought, and the subjective result of their observance is knowledge. Ethics states the laws of conduct, and the subjective result of their observance is virtue.

Volition is inferior to cognition as dependent on it for intelligent guidance. A judgment is prerequisite to any

[1] See *Elements of Psychology*, § 264 *sq.*

adjusted action; a moral judgment, to any righteous action. Through this moral judgment a good will is furthermore dependent on conscience.

Volition is superior to cognition as controlling it. Attention is a concentration of the cognitive consciousness, and to effect this concentration is the sole function of will. All voluntary effort, even that which issues in muscular movement, resolves, in the last analysis, into a fixing of attention. By voluntary attention to this or that object the cognitive powers are directly, and through these all others are indirectly, governed. Voluntary attention is thus the sole yet sufficient means of self-control. We have no other, and we need no other, means of repressing, arousing, directing or combining our faculties, whether of cognition, feeling or desire. For instance, a complete withdrawal of cognition from a desired object, at once determines for the time a complete cessation of the desire.

Volition and desire are psychological correlatives, mutually conditioning each other. Desires condition volition by furnishing occasion for choice and efficient causes of consequent effort. Obviously there can be no choice except between desired objects, and no effort except from impulse. Hence desires are properly motives, they move us to action.[1] On the other hand, desires are conditioned on volition. For

[1] A motive is properly that which causes motion. In our psychology the word expresses the prompting, impulsion, pressure, tendency, propensity or inclination of desire. These words are originally mechanical, and in their application to mind we must beware of a mechanical interpretation. The term motive is often, though less properly, applied to the reason that determines the choice, also to the final cause, the inducement, the object desired, the end proposed. But "the deliberate preference by which we are moved to act, and not the object for the sake of which we act, is the principle of action; and desire and reason, which are for the sake of something, are the origin of deliberate preference."—ARISTOTLE, *Nicomachean Ethics*, bk. vi, ch. 2. Accordingly, in the present treatise, we identify motive with the desire that prevails.

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desire implies preference or choice, and its impulse implies pressure toward endeavor or effort. Clearly there can be no impulsion except in the presence of something impelled, which is the volition.[1]

§ 8. An analysis of an exercise of volition discovers five essential facts which seem to be ultimate, as follow:

1. The idea of something to be done, or of an act in order to an end. The end, and therefore the means, is conceived by the agent to be desirable, and the action practicable. This is a product of cognition.[2]

2. An impulse urging to action. Conflicting impulses coexist. The one that prevails, with which the volition finally accords, is the motive. This is an exercise of desire.

3. The preference of the conscious ego for one line of action rather than another, or for non-action. This is choice or election.

4. The resolution of the choice into an intent to take a certain course, either instantly or in due time. This is intention.

5. An exertion or striving to effectuate the intention, constraining, by means of attention, mental changes and muscular movements. This is voluntary effort.

The idea and the impulse are not elements, but are real conditions, of volition. Its elements are choice, intention and effort.[3]

§ 9. Choice or election is a phenomenon *sui generis*, occurring only within consciousness, and having no analogue

[1] See *Elements of Psychology*, § 257, and § 268 *sq.* "Appetite is the will's solicitor, and the will is appetite's controller; what we covet according to the one, by the other we often reject."— Hooker, *Eccles. Pol.*, bk. i.

[2] "Whether or no the judgment does certainly and infallibly command and draw after it the acts of the will, this is certain, it does of necessity precede them, and no man can fix his love upon anything till his judgment reports it to the will as amiable."— South, *Sermon on Matthew*, 10: 37.

[3] See *Elements of Psychology*, § 272 *sq.*

in the material universe. There are two special conditions precedent, corresponding to the general conditions of volition already cited. These are:

1. Alternativity of possible actions, implying independence of objective control or causation.

2. A like plurality of impulses, counter-checking and restraining each other until a judgment is rendered, and the choice made.

Deliberative intelligence, aroused and influenced by the impelling desires, considers the alternatives, but does not causally determine the election.[1] That the election accord with the weightier judgment is normal, but not necessary. Good and weighty reasons are often rejected in favor of trifles; as when one incurs danger to gratify curiosity. Thus choice is largely independent, both of the judgment which presumes to dictate it, and of the desires which impel it. Its conditions being fulfilled, it is free between the possible alternatives. Indeed this is the essence of choice; no freedom, no choice; no choice, no freedom. We shall inquire presently whether there be in reality such a thing as choice.

Observe the distinction between choice making and choice made. When choosing, one is vacillating under the influence

[1] Intelligence, but not choice, may be fairly likened to a balance, and reasons to the weights. Intellect deliberates (from *de* and *librare*, to weigh, from *libra*, a balance). It ponders the facts and the reasons with a view to choice and decision. — *Elements of Psychology*, § 273, note. Deliberate preference, as well as desire, looks always forward in time. — *Idem*, § 255. "Nothing past is the object of deliberate preference; as no one deliberately prefers that Troy should have been destroyed; for a man does not deliberate about what has happened, but about what is future and contingent. For what is past does not admit of being undone; hence Agathon rightly says: 'Of this alone even God is deprived, the power of making things that are past never to have been.'" — Aristotle, *Nich. Ethics*, bk. vi, ch. 2, 6.

"Non tamen irritum,
Quodcunque retro est, efficiet; neque
Diffinget infectumque reddet,
Quod fugiens semel hora vexit."
— Horace, *Odes*, lib. iii, car. xxix.

of opposed reasons and conflicting desires; when he has chosen, the question is resolved, his resolution is taken, he has decided what to do. This issue of choice is intention. It is static rather than dynamic; a state of mind lying between choice and effort, between election and fruition. Its duration is indefinite, varying from an imperceptible instant to any length of time awaiting opportunity. When this offers, the effort takes place, perhaps blindly, that is, without renewed or further deliberation, and the thing is done.

Effort is the complete and final expression of the free personality or ego. As choice issues in intention, so effort issues in attention, thereby inducing other mental modes, perhaps with muscular motions. In the effort the subjective voluntary action is complete, even though the intended consequents be imperfect or entirely null.

PROLEGOMENA

II. PHILOSOPHICAL

§ 10. Besides the foregoing psychological doctrines there are a number of principles more strictly philosophical, which also are prerequisite to Ethics.[1]

[1] There are various opinions as to the proper scope and definition of philosophy, due mostly to the fact that the word is taken, as is likewise the case with many other important terms, sometimes in a generic and sometimes in a specific sense.

Taken generically it embraces as subordinate branches certain aprioric sciences, called the philosophic sciences, as logic, ethics, æsthetics, epistemology, metaphysics. This last, metaphysics, which is often loosely regarded as synonymous with philosophy, is more strictly the science of reality. It inquires into the real nature of both corporeal and mental objects, seeking to pass from the subjective to the objective, from thoughts to things. Lotze subdivides it into ontology, rational psychology, and cosmology.

Other thinkers take the still wider view that philosophy "consists in the development of a comprehensive and consistent theory of the universe." — KÜLPE, *Int. to Phil.*, § 31, 3. Paulsen warmly pronounces "Philosophie der Inbegriff aller wissenschaftlichen Erkenntnis."— *Einleitung in die Philosophie*, S. 34. So also Renan: "Philosopher c'est connaître l'universe. L'universe se compose de deux mondes, le monde physique et le monde moral, la nature et l'humanité. L'étude de la nature et de l'humanité est donc toute la philosophie."— *Fragments Philosophiques*, p. 292. Likewise Wundt defines philosophy as "die allgemeine Wissenschaft, welche die durch die Einzelwissenschaften vermittelten allgemeinen Erkenntnisse zu einem widerspruchslosen System zu vereinigen hat."— *System der Philosophie*, S. 21. This accords with the saying of Spencer: "Knowledge of the lowest kind is ununified knowledge; science is partially unified knowledge; philosophy is completely unified knowledge." Kant, discarding the narrower scholastic definitions, gives as a "world-definition" the following: "Philosophy is the science of the relation of all knowledge to the essential ends of human reason."

Taken specifically, as coördinate with the specific sciences named above,

Whether there be, truly and really, among the mental activities a choice between alternatives, is properly a metaphysical question concerning a reality. For this subjective freedom is not a fact of consciousness, and thus psychological; for consciousness is cognizant of positive facts only, and the conception of freedom is strictly negative, merely the absence of constraint. Moreover, an unconsciousness of constraint does not prove its absence, for it may conceivably exist out of consciousness. Hence the reality of choice, of freedom in willing, is a debatable question of metaphysics.

Some thinkers hold that the universal conviction of an ability to choose is a delusion which philosophy exposes; that freedom is impossible in reality, since it is contrary to the strictly universal law that every change or event is caused; and, indeed, that freedom is impossible even as a conception, for this would be contradictory to the same law, which is a necessary notion.[1]

Now, if the mental act called a choice be in every respect a change or event, then it must be allowed that it is caused, and so necessitated to be just what it becomes; that there is no real choice, no possible alternative, no freedom. In other words, if the act be essentially a case of causation, then the doctrine of necessity, of bond-will, is true.

But it seems reasonable to hold that the fact, as to its essence, is out of the category of causation. In so far as it is an act passing from indecision to decision, it is obviously

"philosophy is the science of principles."—Ueberweg, *Hist. of Phil.*, § 1. It is thus the investigation and systematic exposition of the fundamental and universal truths that underlie all the sciences, "the investigation of the presuppositions of science."—Külpe, *Int. to Phil.*, § 31, 4. It is evident that all sciences have their common root in philosophy so restricted; for all speak of conditions, axioms, laws, forces, possibilities, realities, etc., which they cannot undertake to establish or explain as applied in diverse senses to diverse spheres, and therefore are relegated for scientific exposition to philosophy thus specialized.

[1] See my *Elements of Inductive Logic*, § 18.

subject to causal constraint; for the mere presentation to the will of opposed alternatives, each conceived to be possible, as to go or stay, is a cause that necessitates the willing of one; I must choose, as we say.[1] But in so far as the fact is merely a preference of this to that, which is its essence, it does not appear to be a case of causation; for mere preference does not imply a change; it is not from that to this, but only is it this rather than that. Circumstances determine that I shall take a step, but not at all which step shall be taken. As the essence of choice, and that which distinguishes it from all other mental facts, indeed from all things else, is simply the taking of one rather than the other of two possible alternatives, and as this does not imply causation, choice may, for aught that appears, be real, freedom a reality. Moreover, causal constraint being absent, and no other being conceivable, we may conclude further that choice, freedom in willing, is a reality.[2]

It is evident that freedom in willing is a condition of all ethical doctrine, a postulate of Ethics. It is *conditio sine*

[1] As of two contradictories one must be true, and it remains to decide which; so of two alternatives one must be taken, and it remains to decide which.

[2] See the discussion in *Elements of Psychology*, § 276 *sq.* The absence of causal constraint, and our inability to conceive any other, does not imply the absence of any determining influence whatever, which absence would allow mere caprice, morally worthless casualty. Determination is of two kinds, causal determination which implies necessity, and rational determination which consists with freedom. Choice is rationally determined, that is, it accords with some antecedent conditioning reason, good or bad. "Deliberate preference does not exist without intellect (διάνοια) and reason (νοῦς)." —Aristotle, *Nich. Eth.*, bk. vi, ch. 2. Desires also condition choice, but do not causally determine it. The saying that the choice always follows the stronger motive, which claims to settle the whole question, is an unwarranted assumption that the desire acts causally on the choice, which begs the whole question. Desire causes, not the choice, but the effort. Kant thus defines desire: "The faculty of desire is the being's faculty of becoming by means of its ideas the cause of the actual existence of the objects of those ideas."— *Critique of Practical Reason*, preface, note.

qua non; if freedom is, duty may be; but if freedom is not, duty is not.[1] The responsible must be free. This, for those holding moral responsibility to be real, is of itself a clear demonstration that freedom, that choice, is real.

There is freedom, then, in the fact of choice. It is not to be found elsewhere. All spontaneous and involuntary changes are effects determined by one's constitution and environment. Every voluntary change is an effect determined, directly or indirectly, by the will. Within the will, the effort is causally and directly determined by that antecedent desire to which preference is yielded, the motive. The intention is merely choice as a fact, as made. Only in choosing is there freedom from causation.[2]

§ 11. In the precedent psychological sketch it is assumed that the human mind has a faculty of pure intellectual intuition, the pure reason.[3] The reality of this faculty is likewise a metaphysical theme, one which has been much discussed by philosophic thinkers. Only a brief explanation

[1] Says Kant: "While freedom is the *ratio essendi* of the moral law, the moral law is the *ratio cognoscendi* of freedom. Were there no freedom it would be impossible to trace the moral law in ourselves at all." —*Critique of Practical Reason*, preface, note. Says Bishop Martensen: "Only in the domain of freedom is morality possible." — *Christian Ethics*, p. 3.

[2] Says Kant: "Will is that kind of causality attributed to living agents, in so far as they are possessed of reason; and freedom is such a property of that causality as enables them to originate events independently of foreign determining causes." See *Elements of Psychology*, §§ 257 n, 272 n, 275 n.

[3] See *supra*, § 2; also *Elements of Psychology*, § 113 *sq.*, and § 124 *sq.* The faculty of pure reason, by which the mind cognizes necessary and universal ideas and principles, is in Greek termed *νοῦς* and in German Vernunft; that which cognizes contingent matter, *διάνοια* and Verstand. Aristotle thus defines the former: *Ὁ νοῦς ἐστὶ περὶ τὰς ἀρχὰς τῶν νοητῶν καὶ τῶν ὄντων· ἡ μὲν γὰρ ἐπιστήμη τῶν μετ' ἀποδείξεως ὄντων ἐστὶν αἱ δ' ἀρχαὶ ἀναπόδεικτοι.*—*Magna Moralia*, i, 35. Kant, the highest modern authority in this matter, defines thus: "Pure reason (Vernunft) is the faculty which contains the principles of cognizing anything absolutely *à priori*." — *Critique of Pure Reason*, Int., § vii.

of the view adopted in the present treatise is practicable in this connection.

We hold that mind is constituted with power to know both itself and things other than itself, the conditions of their existence, and their relations to each other. This cognitive constitution is fitted, not only for the empirical, but also for the pure intuition of objective reality. Consciousness, in the presence of some adventitious, empirical matter perceived by sense, external or internal, has, beside and along with sense, an intellectual power to discern in the total fact an essential element, equally adventitious, but not at all sensuous. This is the power of pure reason. That element of the total which is not the object of sense, is the object of reason; both elements are objective and real in the total thing known.

A conscious experience, for example, of a succession of mental states given in self-perception, the internal sense, involves time, which is not an object of sense, but is discerned by pure intellect or reason, as a necessary and objectively existing condition of the succession. Upon the occasion of an experience of body, the empirical intuition implies and is conditioned on a pure intuition of space, a non-sensuous object occupied by and containing the body. An experience of a change, especially of one that is constrained by conscious effort, noting that the subsequent is not detached but grows immediately from its antecedent, is an empirical occasion for the purely intellectual discernment of causation as the necessary condition of change, of a reality, a force, existing in the relation of things that change. Now from the law of relativity, that every mode of consciousness subsists by virtue of an opposition, that every affirmation is also a negation,[1] it follows, that the idea of causation as constrained action, is necessarily supplemented by the negative correlative idea of

[1] See *Elements of Psychology*, § 58.

freedom as unconstrained action. A conscious act, judged to be free, is, in the human mind, an occasion for an intuition of the pure idea of right or duty. Such action, not coming under the law of causation, is cognized as under a different law, the law of obligation.

Thus time is a condition of event, space a condition of body, substance a condition of quality, non-contradiction a condition of thought, cause a condition of change, right a condition of obligation. Upon the metaphysical question whether these pure ideas correspond to objective realities, we observe simply, that they stand prior to things in the relation of condition to conditioned. They must be in order that things may be; the former necessary, the latter contingent. If a thing be real, its condition must be real.

We have already identified the intuition of duty in its mandatory form, that is, the moral law or law of obligation, with conscience. Even should the intuitive character of this discernment be rejected, still it would remain true that conscience, the discerning of moral law, is, like freedom, a necessary condition, and hence a postulate of Ethics.

§ 12. It is here in place to inquire what is meant by a person.[1] We can readily conceive of beings intelligent and sentient, and having free-will, but not having conscience. In fact we thus judge of brutes. But beings destitute of

[1] A word borrowed from the theater where it still plays its part in *dramatis personæ*, impersonation, etc. Its etymology is more curious than helpful. "Lat. *persōna*, *personare*, to sound through; *per*, through, and *sonare*, to sound, from *sonus*, sound. The *persōna* was first a mask used by an actor, then a personage, character, part played by an actor, a person. The large-mouthed masks worn by the actors were so called from the resonance of the voice sounding through them." — Skeat. Persona has come to mean the inner spiritual subsistence that sounds through the mask of external individuality. It is not the collected fagot of those peculiar visible traits, which may distinguish but do not compose the man; it is the unified sum of those common mental and moral characteristics which make him an answerable soul.

moral insight, and therefore not morally accountable, are not persons; for moral insight or conscience is the differentiating essence of personality. Accordingly we define a person to be an intelligent and sentient being, having free-will, and moral insight. But, since consciousness is generic of the modes knowing and feeling, desiring and willing, it will be sufficient to define a person as a being conscious of moral insight.

In the knowledge of our shortcomings we recognize ourselves as imperfect persons, and as such subject to the law with its penalties, of which law we have moral insight. Hence the imperfect person, the human person, is a being conscious of obligation.

The notion of an imperfect person is necessarily supplemented by the correlative notion of a perfect person. This ideal person fulfills the requirements of the law by virtue of his nature, and therefore is superior to obligation, not under the law, which is for imperfect persons only. Now perfection is complete, consummate wholeness. Hence a perfect person is a being conscious of holiness.

In the knowledge of the narrow limitation of our powers we recognize ourselves as finite beings. The notion of finite being is necessarily supplemented by the correlative notion of infinite being. This notion, combined with that of a perfect person, constitutes the notion of Deity, a perfect and infinite person, or a perfectly harmonious personality infinitated.

The moral law demands of imperfect persons perfection. This then must be possible, else the law would be *brutum fulmen*. Now the real object of a will determinable by moral law, is its perfect accord with the law. This angelic perfection is an ideal not attainable, says Kant, by human beings in this life. But, since it is required as practically necessary, it can be looked for only as the result of progress thereafter *in infinitum*. Hence, not only the present existence of persons, of imperfect persons, but also their immortality, as

inseparably connected with moral law, is a postulate of Ethics.[1]

§ 13. Whether there be an objectively real being corresponding to the notion of Deity, is yet another metaphysical thesis, to which attention is now directed; for the reality of a superhuman person, the supreme maker, ruler and judge of the universe, is a doctrine essential in complete ethical theory. Hence, after a very brief consideration, we shall assume it as an additional postulate of Ethics.

Logical proof of the existence of God has, in all ages, been earnestly sought by philosophic thinkers, but even yet it is hardly established as an unquestionable philosophical doctrine. Various forms of the ontological, the teleological, and the cosmological arguments have been proposed, criticised, and replaced by other forms, without settled result. We cannot here examine this august theme adequately, but will venture to offer a suggestion.[2]

Let the cosmological argument be formulated, not *à priori* as is usual, but *à posteriori*, adhering strictly to the logical

[1] So Kant in *Critique of Practical Reason;* the *Dialectic*, ch. iv.

[2] "How can one be calm when he is called on to prove the existence of God? But let us reason gently, smothering our indignation."—Plato in the *Laws*, 888 A, Ste. The several forms of argument named are effectively criticised by Kant, 'the all-destroyer,' in the *Critique of Pure Reason;* the *Dialectic*, bk. ii. ch. 3, § 3 *sq.*, concluding in § 6: "A Supreme Being is, therefore, for the speculative reason, a mere ideal, though a faultless one, a conception which perfects and crowns the system of human cognition, but the objective reality of which can neither be proved nor disproved by pure speculative reason." Elsewhere he says: "Providence has not willed that those convictions which are most necessary for our happiness should be at the mercy of subtile and finely-spun reasonings, but has delivered them directly to the natural, vulgar understanding. . . . It is altogether necessary that we should be convinced of God's existence, but not so necessary that we should be able to demonstrate it."—In the Essay: *Der einzig mögliche Beweisgrund zu einer Demonstration des Daseins Gottes*, 1763. It is well worth noting that the Scriptures nowhere offer logical proof of the existence of God; but, from the very outset (*Genesis* 1:1) throughout, it is assumed.

method for solving the problem: Given intermixed effects to find their cause. The method is one highly approved and very familiar in physical science.[1]

A scientific explanation of phenomena is found in their causes. Looking abroad on the world of nature, we behold a bewildering multitude, a vast complexus of objects and events. To explain these severally, science investigates their proximate or second causes. In explanation of the great total, the universe, let us posit hypothetically an adequate personal first cause. That this is a possible conception is evinced by the fact that it is the faith of millions of men.

The personal cause in the hypothesis is a *vera causa*, that is, an agency known to be effective in other connections. Every person knows himself and his fellows to be efficient causes, originating causes, creators or builders of new things from material at hand. We shall claim only this for the posited first cause.

The supposed adequacy of the personal first cause is an indefinite extension of such powers as are known to belong to ordinary persons. It becomes thereby a complete and sufficient explanation of the totality of the phenomena under consideration. So the geologist, in positing early cataclysmic causes, supposes these to be such forces as are now under observation, and that they acted with vastly greater intensity.

Thus the two prime conditions of a soundly scientific hypothesis are fulfilled in that we posit a *vera causa*, and one that explains all the facts. It is therein superior to Dalton's atomic hypothesis which does not posit a *vera causa*, to Darwin's development hypothesis which does not explain all the facts,[2] and to Huygen's luminiferous ether hypothesis

[1] See this method of investigation explicated and exemplified in *Elements of Inductive Logic*, § 82 *sq.*; see also § 97.

[2] See Professor Cown's admissions in his *Evolution of To-day*, p. 117 *sq.*; and Mill's *System of Logic*, 8th ed. p. 355 note. See *infra*, § 20.

which does neither; yet these are generally approved by scientists, and claimed as invaluable parts of the sum of positive knowledge. But our hypothesis, notwithstanding its excellence, remains an hypothesis, an unproved proposition, unless we can show also that no other hypothesis will explain the facts.

Now a first cause is the only possible explanation; for its sole alternative is an infinite regressus of causes, and this can make no pretense to be an explanation, for evidently it merely pushes explanation back, away, out of reach, in fact denies any explanation to be attainable, which is essentially the agnostic position. Therefore an explanation of the universe must posit a first cause. By like process of proof, that no other hypothesis would explain the facts, Newton established the theory of gravitation.

Furthermore, the first cause must be either personal or impersonal. The latter alternative is proposed to us in the unintelligent deity of the pantheist, its manifestations being unconsciously worked out by the inward necessities of its nature. This banishes freedom in willing from the universe. Moreover, how an unconscious, unintelligent being, which is not a person but merely a thing, could originate personal beings, beings consciously intelligent, is inexplicable; which is to say, the impersonal hypothesis does not explain the facts. Therefore the tenable hypothesis of a personal first cause, no other hypothesis being tenable, having thus fulfilled the prime and the final conditions of strict logical proof, should be accepted as an established scientific theory.[1]

[1] By the same logical process the existence of Neptune was proved, before its revelation by the telescope.

Lord Bacon says: "It is true, that a little philosophy inclineth man's mind to atheism, but depth in philosophy bringeth men's minds about to religion; for while the mind of man looketh upon second causes scattered, it may sometimes rest in them, and go no further; but when it beholdeth the chain of them confederate, and linked together, it must needs fly to Providence and Deity." — *Essay* xvi.

An additional word may be said in reference to the moral element in personality. The moral law, the most important factor in a world of intelligences, is necessarily referred to the personal first cause as an expression of his will, which, further, is an expression of his nature. This law demands holiness. Therefore his nature must be holy.[1]

Now it is to be admitted that the foregoing argument, like the teleological argument, does not establish the infinity of the divine attributes. The power and wisdom are seen to be indefinitely great, but this falls short of infinite. Moreover, the bringing into being what was not, is unproved. The personal first cause herein concluded is, therefore, no more than the demiurge of the early Greek philosophers, an architect, building with material at hand. But let it be observed that, while the passing from the indefinitely great to the infinite may have insufficient logical ground, still it is an easy step for faith.[2] Also be it observed that creation, in an absolute sense, is for philosophy an impossible conception, since it is an attempt to think a relation of one term, which is absurd.[3]

We have touched briefly upon the great theses of philosophy, freedom, immortality,[4] and God. For while Psychology is merely a system of natural order, and Ethics a system of

[1] The unity of this First Cause may be inferred from the unity of the reciprocal relation existing between parts of the world, as portions of an integral edifice; an inference which all our observation favors, and all principles of analogy support.

[2] See *supra*, § 12, fourth paragraph.

[3] Absolute creation means: Nothing becomes something. Herein is no subject, for nothing is — well, no thing, a pure and total negation. For like reason annihilation is an impossible conception. Physicists hold it impossible that any particle of matter, or any pulse of energy, can cease to be. The Hegelian, however, setting aside the law of contradiction, also holding that nothing is a thing, and that becoming mediates nothing and something, presumes otherwise.

[4] Kant, *Critique of Pure Reason*, Introduction, § 3, *et al.*

natural jurisprudence, Philosophy is properly a system of natural theology. Science, in its full comprehension, is knowledge of myself, of the world, and of God. This is its beginning, its mean, and its end. The problem of the ages is: Given self, to find God.

§ 14. In preparation for an ethical doctrine founded on personal relations, it is needful to examine the philosophy of relations taken in a more general sense.

Nature, under which term we here include all objective realities, presents only individual things, or individual groups of things, in certain relations. The things are real, and their relations are real. This statement assumes the doctrine of Natural Realism, as opposed to Idealism.

An individual, as the form of the word indicates, is a thing or a group of things, indivisible in itself, while divisible from every other thing. This means that its parts are not kinds of the whole taken generically, but are new individuals, and that it is distinguishable, at least numerically, from every other thing. Moreover, an individual is, as to its mere existence, independent of other things.[1]

The general, which is the logical opposite of the individual, has no objective existence. It is wholly subjective, a state of mind, a conception, a product of thought, or simply a thought. All common nouns, as stone, tree, man, are merely signs or expressions of thoughts. They have no general object corresponding to them in nature, and their generality consists solely in being predicable of any one of a plurality of individual things.

[1] The Scholastics, following Porphyry, define an individual to be *ens indivisum in se, et divisum ab omni alio; id cujus proprietates alteri simul convenire non possunt.* Also as *ens per se subsistens.* "Whatever occupies a distinct portion of space is an individual object of external intuition; and whatever occupies a distinct moment of time, without extension in space, is an individual object of internal intuition. . . . The general notion as such is emancipated from all special relation to space or time."—Mansel, *Metaphysics*, pp. 37, 39.

While generalities have no objective reality, the particular relations of individual things are evidently not less real than the things themselves, though indeed they are not objects of sensuous but only of intellectual cognition.[1] These relations are reciprocal, and when thoroughly traced, each is seen to be illimitable. All things in the universe are mutually related. Plurality and unity interpenetrate and condition each other. Each is in all, and all in each.

For let us consider that every particle of matter occupies and is contained in space. Each particle is related to every other as to its position, a geometrical relation, and as to its motion, a mechanical relation. Any change of position places it in a different and distinguishable relation. Relative rest and relative motion are the only kinds of rest and motion known. These reciprocal spatial relations combine the plurality of things into the unity of a corporeal whole.[2]

Consider also temporal relations. Space is extension, having three dimensions; time is protension, having but one dimension. Yet every event is related temporally to every other as precedent, simultaneous or subsequent. These relations also are reciprocal, comparative and measurable. They combine the plurality of events into the unity of an historical whole.

Together with spatial and temporal relations are relations of causative interaction. Every particle of matter in the universe attracts every other.[3] All are in motion, and mutu-

[1] Some philosophers, in opposing the doctrine of the Absolute or Being without relation, emphasize the reality of relations, regarding them indeed as the very essence of all reality. So Lotze: "Sein heist in Beziehungen stehen, und das Wahrgenommenwerden ist selbst nur eine solche Beziehung neben andern." — *Grundzüge der Metaphysik*, § 10.

[2] World and universe are proper synonyms, the latter from Lat. *ad unum versus*, turned into one, equivalent to *e pluribus unum*. Aristotle defines Nature as the complex of objects having a material constitution and involved in necessary motion or change. — *Physica*, ii, 1; *cf. De Coelo*, i, 1.

[3] Hence each material particle is the center of a sphere of force filling

ally determine each other's motion. A stone falls to the ground; the earth rises to meet it. The earth and moon enforce each other to revolve about their common center of gravity. Also, because of their motion and mutual attraction, the planets and the sun revolve about their common center of gravity, and thereby constitute the solar system a unitary system. This system as a whole revolves about some higher center of the stellar system, a larger whole. Thus again the corporeal universe is a unit, more closely bound into one by virtue of efficient causes.[1] Moreover, these causative interactions are continuous throughout time, bringing past, present and future into a more compact historical whole, binding them into a closer unity by interlinked chains of causes and effects. Thus throughout the universe of space and time, every individual body is causally related to every other. All act upon each, and each upon all.

§ 15. The foregoing are primary conditions of yet another specific relation of the highest import, the relation of means and end. Its philosophic treatment is teleology, which views nature as a kingdom of ends.[2] We shall here consider

space. Gravity, unlike energy, is not transmitted, nor transferred, nor transformed, and is not obstructed. It coexists with its substantial center.

[1] To the molar motions indicated are to be added molecular motions, including all vibratory and chemical action.

[2] The expression is borrowed from Kant, who says: "Teleology considers nature as a kingdom of ends. Ethics regards a possible kingdom of ends as a kingdom of nature. In the first case, the kingdom of ends is a theoretical idea, adopted to explain what actually is. In the latter, it is a practical idea, adopted to bring about that which is not yet, but which can be realized by our conduct, provided it conforms to this idea." — *Metaphysic of Morals*, in R. and S. ed. of Kant's works, vol. viii, p. 66 note.

"Leibnitz termed the world when viewed in relation to the rational beings which it contains, and the moral relations in which they stand to each other, under the government of the Supreme Good, 'the kingdom of Grace,' and distinguished it from the 'kingdom of Nature,' in which these rational beings live, under moral laws indeed, but expect no other consequences

the teleologic relation merely as an existing fact, the end as an effect, not as a design or final cause.[1]

In many individual groups of things the relation of means and end may be discerned, binding the components into an organic whole. Accordingly an organism is defined as a group in which all parts are mutually means and end. Each part is for every other; also each is for the whole, and the whole for each; all serving all.[2] An organ is a member of an organized group, serving all other members as ends. Every constitutive part is an organ, an instrument, a means. It has certain special functions relating to the rest severally and as a whole; and when it entirely ceases to perform its office, it ceases to be a member of the organism.

It is not a fancy, nor a mere speculation, but a fact, recognized by philosophy and lying at the base of all science, that the universe is a kingdom of ends, an organism constituted of minor organisms. Space is for bodies, and bodies are for space. Time is for events, and events are for time. Space without body, or time without event, is unthinkable. Gravitation draws all bodies toward one center, and radiation disperses to all bodies the store of energy collected in that center. Every star, and every planet, and every satellite, has its peculiar office relative to the rest. The extinction of any one would necessitate a readjustment of the whole. Nature,

from their actions than such as follow according to the course of nature in the world of sense. To view ourselves, therefore, as in the kingdom of grace, in which all happiness awaits us, except in so far as we ourselves limit our participation in it by actions which render us unworthy of happiness, is a practically necessary idea of pure reason." — KANT, *Critique of Pure Reason*, Meiklejohn's trans., Bohn's ed. p. 492.

[1] Final cause, the excitant and object of purpose, implying antecedent efficient cause, and inferring First Cause. On the Aristotelic division of causes into four several kinds, see *Elements of Inductive Logic*, § 14 note.

[2] The word *all* is ambiguous, meaning either all as an undistributed unity, or all as a distributed plurality; as in *Drink ye all of it.* In the above formula, and elsewhere in this connection, both meanings are applicable.

the great world of all things, is an organized individual, a cosmos.

The earth is a cosmic unity. In its series of periodically recurring changes, reproductive life is linked with the seasons, and active life with day and night. It is itself made up of relatively independent organisms. For example, every animal is an organism. Each of its members, even the least, is an organ serving the sustenance of all others, and receiving sustenance from all. The head is for its hair, and the hair for the head, and both for the trunk. Should any organ cease its functions, it suffers atrophy, or is cast off as excrementitious; and when the chief organs cease their ministry, life ceases, and the integral whole disintegrates. A plant is an organic whole. The root is for the leaf, and the leaf for the root; and the other parts serve the leaf and root, else these could not perform their functions. All are reciprocally related as means and end.[1] As physiology thus resolves living bodies into organized organs, so chemistry teaches that all bodies consist of systems of molecules, and these ultimately of systems of atoms.[2] Every subordinate is a microcosm repeating the macrocosm.

[1] Says von Baer, as quoted by Paulsen: "The animal kingdom cannot exist without the vegetable kingdom; this again cannot arise before the stony crust of the earth has been disintegrated into loose soil by physical and chemical influences. We must further presuppose that this soil is watered by rains from time to time. The rain can fall only on condition that the water has previously been absorbed by the air, that it has been carried to a higher stratum and then condensed by a change of temperature. The water, again, cannot rise unless the earth is heated by the sun's rays. Hence the smallest blade of grass really calls into play the entire planetary system with all its arrangements and movements, and all the laws of nature." — *Int. to Phil.*, p. 232.

[2] "Das Staübchen, selbst der unfruchtbare Stein,
Indem er sein Gesetz hat, muss er wirken
Und thätig für das grosse Ganze sein." — GOETHE.

The relations seen in simple cohesion "indicate more than mere resemblance, an inherent kindred. They indicate on the part of two globules of the same elementary body a predisposition perfectly reciprocal to cleave to

§ 16. In the kingdom of ends is included the spiritual realm. We conceive that it contains no isolated elements, that throughout its sphere there is organized interaction. Within the range of observation is the human mind, constituted by a complement of faculties whose activities are mutually conditioned, and coöperate to a common end. As in the corporeal so in the spiritual sphere, very many of the most important ends are attained only by means of a combination of energies.[1]

The universe as a total we conceive to be composed of the spiritual and the corporeal united in an interchange of functional activities. Many minor wholes are thus organically constituted. Each individual man is a double organism consisting of body and mind. He is also a member of wider combinations; for none of us liveth to himself, and none dieth to himself. The family is an organic individual, its members being normally related for mutual service. Every individual community or organized society has a constitution, written or unwritten, whose essence is a definition of the offices of its members in their service of the common interest. The city, the state, the nation, has organic laws constituting it an individual, wherein its citizens are each for all and all for each. The human race is an organized individual, its members being bound into one by natural affinities, and related by teleological interaction. Moreover, the content of an individ-

one another, to hold real relations. They indicate that no particle exists for itself, but that its nature points to relation with other particles. They indicate that though each particle thus exists for others, as well as for itself, it does not exist indifferently for all others of any sort, but for others of its own kind in the first degree, and then for others of different kinds in a second degree."— Wm. Arthur, in the Fernly lecture *On the Difference between Physical and Moral Law*, p. 49; London, 1883.

[1] Says Leibnitz: "Les âmes agissent selon les loix des causes finales par appétitions, fins et moyens. Les corps agissent selon les causes efficientes ou des mouvements. Et les deux règnes, celui des causes efficientes et celui des causes finales, sont harmoniques entre eux."— *Monadology*, § 79.

ual life cannot be described except relatively to the historical whole. The entire history of the age and of the entire past is contained in it, and its influence extends throughout the entire future. The kingdom of ends is the universe. Everywhere there is reciprocity, a relation of mutual interdependence and altruistic subservience, a universal ministry. All serving all is the fundamental, thorough-going, uniform plan of the world.

§ 17. Yet another philosopheme to be considered is the conception of law. It is probable that the notion originated historically in the expressed will of a superior in authority and power. But this meaning has become specific, the notion having been extended to include generically various uniformities, though still retaining, perhaps in all of its applications, a covert suggestion of authoritative imposition. We must look away from this origin for its essence.

The ultimate ground of the notion is in the shock of similarity.[1] When two facts, either things or events, make a striking impression of similarity, one is regarded as a repetition of the other; that is, a phenomenon is said to be repeated when the mind of the observer receives impressions so very similar as to be indistinguishable except as to place or time. When several such impressions recur, the notion of repetition is expanded into the notion of order. This implies a correspondence, more or less constant, among the facts, which is referred either to their inherent nature or to their conformity with some rule, perhaps a mandate, an order, of a ruler. When the order of the facts, either existing or required, is undeviatingly constant, the notion of order is expanded into the notion of strict uniformity.

It has already been pointed out that objective reality presents only related individuals. Now among real things or

[1] See *Elements of Psychology*, § 59.

events, we observe many cases of naturally existing repetition, order, strict uniformity; and, by interposing our force, we are able to induce uniformities that otherwise would not exist. These uniformities may be severally reduced to the form of a general conception, and the expression of this conception is a law. Thus a law is an expression of a strict uniformity, either of one observed to exist in nature, or of one required to be produced by will. These considerations enable us to make a formal statement of the essential meaning of this comprehensive and important term in its most general definition, thus: *A law is a designation of a constant order of facts determined by the constitution of the things.*

Let it be remarked that the *things* are those from whose constant order the law arises, and to which it applies; also that the *constitution* of a thing is an assemblage of inherent properties which, being constant causes, *determine* both the facts and their constant order or uniformity; also that, since a plurality of individual things have similar constitutions, the uniformity is intellectively viewed as general, and is expressed in a general formula or law. Hence, furthermore, since a law is a form of intellective apprehension, a generality in itself and in its expression, it is entirely subjective, existing only in mind as a thought. Law has no real existence in the external world. Uniformities there are, but these are individual though similar facts. Their mental reduction, by virtue of their observed similarity, to a generality is a law, which being expressed in language attains thereby only a quasi-objectivity. The very common notion that law prevails objectively and reigns throughout the universe, is a rhetorical fiction. Laws are only mental representations, conceptions, intelligent interpretations of recognizable uniformities. Hence a law, formulated and expressed, is merely and properly a *designation*, or that which marks out and

makes known in general terms a real uniformity, either observed or required.[1]

§ 18. Laws are primarily of two kinds, formal and material. Formal laws designate or express merely the forms of mental conception, and thus are intellectual abstractions discharged of all content. Such are the principles of mathematics and of logic. Material law has content; it designates order in phenomena.

Material law is likewise of two kinds, natural and moral. Natural law is a generalization of facts of coexistence, or of events of orderly succession, in inanimate things, and also in animate beings apart from their free will. It designates an established uniformity which has been found to exist in nature. Moral law is a mandate addressed to persons. It implies a possible alternative; and the required order, determined by the constitution of its subjects, is sanctioned and enforced by penalty.

Natural law is simply indicative; moral law imperative.

[1] See in *Elements of Inductive Logic* the chapter on "Natural Law," §§ 90–100. Montesquieu defines thus: "Laws in their most extended signification are the necessary relations arising from the nature of things." — *L'Esprit des Lois*, bk. i, ch. 1, opening sentence. It has been strikingly said: "A law is a human translation of the divine procedure." Perhaps it would be more permissible to say: A law is an interpretation of cosmic order. Hooker, in his *Ecclesiastical Polity*, defines law in its universal meaning. Also we have: "A law is a rule or method according to which phenomena or actions follow each other." — Black, *Dictionary of Law*, *ad verb.* But: "Law, in its most general and comprehensive sense, signifies a rule of action . . . prescribed by some superior, and which the inferior is bound to obey." — Blackstone, *Commentaries*, Int., § 2. Thus jurists usually limit the meaning to what we term moral law; as, "A law, properly so called, is a command which obliges a person or persons." — Austin, as quoted by Black. Again: "A law, in the literal and proper sense of the word, may be defined as a rule laid down for the guidance of an intelligent being by an intelligent being having power over him." — Austin, *Jurisprudence*, § 2. Again: "Law in its most comprehensive sense is a rule of action for intelligent beings, and in its practical and more limited sense for men." — Minor, *Institutes*, Int. § 2, p. 22. Under this limited mean-

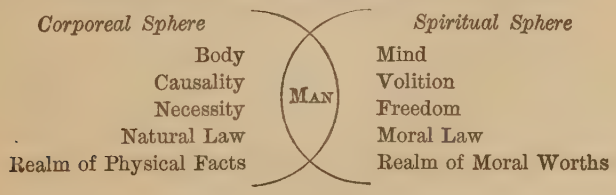
The one is a uniformity established, having no alternative; the other is a uniformity enjoined, having an alternative. The basis of natural law is causation; the basis of moral law is obligation. In the one the facts come before the law; in the other the facts come after the law. The one generalizes real facts that actually are; the other designates ideal facts that ought to be; the former inductively, the latter deductively.

We conceive accordingly of the kingdom of ends, the macrocosm, as divided into two realms, the corporeal and the spiritual. Body, which is the substantive content of the former, is ever strictly subject to causation, and hence its sphere is characterized by necessity, and is the realm of natural law. Mind, which is the substantive content of the latter, exercises self-determination; and hence its sphere is characterized by freedom, and is the realm of moral law. These two spheres, the realm of physical facts and the realm of moral worths, intersect in the microcosm man, who, belonging at once to both spheres, is thus the connecting link, the bond of the universe.[1]

Moral law, with which alone we are concerned in this treatise, is based upon a single essential principle, which

ing some moralists and jurists distinguish Divine Law, or the revealed will of the Deity, and Natural Law, or the constitutional order of human nature, and Civil Law, or the enactments of the State. See *infra*, § 47, note. We include all these under the generic term Moral Law, to which is opposed Natural or Physical Law, in accord with more general usage.

[1] We venture, for the sake of greater clearness, a diagrammatic representation of the Kingdom of Ends distinguishing its two Realms:



takes an imperative form, and in this form is recognized as an all-comprehending mandate, as the moral law. It has many subordinate branches or specific applications which apply to every phase of human conduct. Without offering a complete or strictly logical distribution, it will be sufficient just now to point out its most important subordinates. The Decalogue is so widely comprehensive that it is often spoken of as itself the moral law. All municipal laws, both common and statute, of organized states, derive their authority solely from the supreme authority of the moral law. Military law in all of its details, has no other ground. The laws of all kinds of formally organized societies, such as churches, colleges, clubs, bands, etc., are likewise specializations of the moral law. All the tacit conventions and unwritten laws of social intercourse, including the internal regulations of the family, and even the petty forms of politeness and simple kindness, owe whatever claim they have on us to the one law, the moral law, whence they are derived. This catholicity of the law throughout human affairs, applying to all human voluntary activity, to all conduct public and private of single persons or of communities, renders the inquiry, on which we are now about to enter, one of supreme importance, and therefore of profoundest interest.

ETHICS

FIRST PART—OBLIGATION

INTRODUCTION

§ 19. In looking on the world around and above us, we discover, amid an infinite variety of ceaseless changes, a certain uniformity established, which, reduced to comprehensive expression, is termed the law of gravity. In looking on the world within us, we discover, amid its incessant changes, a certain uniformity enjoined, which, reduced to comprehensive expression, is termed the law of morality. The law of gravity represents something real, a fixed corporeal order, with which we have to do in every waking moment of active life, and to which we must constantly adjust the movements of our bodies. The law of morality also represents something equally real, a required spiritual order, with which we constantly have to do, a universal mandate overruling all relations between man and man, to which must be adjusted every voluntary action and proposed line of conduct. The reality of moral law as an inflexible factor in human life, involved in the essential constitution of human nature, is a scientific truth, as undeniable as the law of gravitation, and one whose importance surpasses comparison.

Science has been well defined to be a complement of cognitions, having, in point of form, the character of logical perfection; in point of matter, the character of real truth.[1]

[1] Hamilton, *Logic*, § 80.

More briefly, science is systematized knowledge. There are a number of sciences which may be distinguished as sciences of human nature, Ethics being the chief. Pre-supposing and involving more or less knowledge of the others, it assumes a basis, develops a system, and elaborates principles and rules for the conduct of men individually and collectively. In view of its basis, Ethics is the science of rights; in view of its system, Ethics is the science of obligation.[1]

1 "Ethic, relating to custom. (Lat. from Gk.) Commonly used as *ethics*, sb. pl. 'I will never set politics against *ethics*'; Bacon (in Todd's Johnson). From Lat. *ethicus*, moral, ethic. From Gk. *ἠθικός*, ethic, moral. From Gk. *ἦθος*, custom, moral nature; cf. *ἔθος*, manner, custom. Cognate with Goth. *sidus*, custom, manner; with Ger. *sitte*, custom; with Skt. *svadhá*, self-will, strength. And cf. Lat. *suetus*, accustomed. The Skt. form is easily resolved into *sva*, one's own self (Lat. *se* = Gk. *ἑ*), and *dhá*, to set, place (= Gk. *θε*); so that Skt. *svadhá* (= Gk. *ἑ–θος*) is 'a placing of one's self,' hence self-assertion, self-will, habit."— Skeat. "Moral virtue results from habit, *ἦθος*, whence also it has got its name, *ἠθική*, which is only in a small degree altered from *ἔθος*."—Aristotle, *Nic. Eth.*, bk. ii, ch. 1. Perhaps this was suggested by Plato: *κυριώτατον γὰρ δ᾽ οὖν ἐμφύεται πᾶσι τότε πᾶν ἦθος διὰ ἔθος.* — *Laws*, vii, 792 e. See also *infra*, § 21, note.

Right, erect, correct, straight, upright, according with truth and duty. From A. S. *riht*, from Teut. base *rehta*, right; from the base *rak*, root *rag*, to rule, direct; whence Lat. *rectus* (for *regtus*), right, pp. of *regere*, to rule. —Skeat. Used also substantively with a modified meaning. See *infra*, § 34, note. For etymology of wrong, see *infra*, § 55, note.

Obligation, from vb. to oblige = to bind to, to constrain; from Fr. *obliger*, from Lat. *obligare*, to bind together, from *ob*, to, and *ligare* to bind.—Skeat. We shall use the word exclusively in its most usual sense of moral constraint, or bounden duty, as distinguished from causal constraint.

Deontology, the science of obligation; from *τὸ δέον*, what is binding, p. of *δεῖ*, impers. from *δέω* (the Gr. correlate of Lat. *obligo*), to bind, and *λόγος*, discourse. Bentham chose this word as the title of his system and treatise, using it, as he says, "to represent, in the field of morals, the principle of utilitarianism, or that which is useful." Whewell objects, and says: "The term *deontology* expresses moral science, and expresses it well, precisely because it signifies the science of duty and contains no reference to utility." Stewart tells us that "the ancient Pythagoreans defined virtue to be *Ἕξις του δέοντος*, the habit of duty, or of doing what is binding, the oldest definition of virtue of which we have any account, and one of the most unexceptionable." The term is, however, *insolens verbum*, having been superseded by the word ethics.

§ 20. The hypothesis of evolution has been applied to the explanation of ethical phenomena. Evolution, as a doctrine, is concerned with sequence in the form of a series, without a beginning and without an end. It can neither ascertain the primal origin of the series, nor predict its ultimate issue. Only a small section of the series is accessible to observation, yet it is boldly projected into a prehistoric past, and upon this hypothetical history is founded an explanation of present phenomena. The speculation is captivating but hazardous. It inquires how morality has come to be, assuming an origin in some heterogeneous principle transmuted under the influence of environment. But we are rather concerned to know what morality is, and purpose to study its phenomena as manifest in mankind of to-day and of history. Inquiry into its genesis and prehistoric development may well be postponed until at least we have a firm hold upon the thing itself.[1]

There are many moralists who educe their ethical systems from the Scriptures. No doubt the light of revelation has enabled the Christian philosopher to advance far beyond the conceptions of the heathen world; his higher height has given him a greatly enlarged horizon. But a science may not borrow its essence, nor appeal to authority in support of its doctrines. More especially we should not confuse science and revelation. These are distinct though concordant means of knowledge, the one aspiring to attain truth by its own

[1] See *supra*, § 6, note; and *Elements of Inductive Logic*, §§ 75, 85. Professor Huxley, in his Romanes Lecture, affirms that: "The practice of what we call goodness or virtue involves a course of conduct which, in all respects, is opposed to that which leads to success in the cosmic struggle for existence. In place of ruthless self-assertion it demands self-restraint; in place of thrusting aside, or treading down, all competitors, it requires that the individual should not merely respect, but shall help his fellows; its influence is directed, not so much to the survival of the fittest, as to the fitting of as many as possible to survive. It repudiates the gladiatorial theory of existence." See *infra*, p. 41, note.

effort, the other condescending to impart from its abundant store. If Ethics is to take rank with the philosophical sciences, it must have a basis of its own, and build thereon its system. Therefore, in the progress of our proposed investigation, we shall in no case cite Scripture as warrant or as proof, but only for illustration or verification. Still it will be encouraging to find the elaborated and the revealed doctrines in accord, and mutually corroborative.

§ 21. A brief sketch of the ground and the process adopted in the present treatise is now in order.

The basis assumed is human nature. Man has an original, native constitution, which, however much it may be distorted, disordered and depraved by his perverted free wilfulness, is nevertheless traceable amid its ruins. There are certain fundamental and essential features of humanity, which no process of suppression or violation can ever wholly efface. There are capacities and faculties whose organic functions in their mutual relations, and relatively to their environment, are clearly manifest, however enfeebled by misuse, or deformed by abuse. The recognition of these features and powers, and a representation of their orderly functioning, is an ideal restoration of human nature to its normal condition, and to its fitting place in the life of the world. This rehabilitated man we shall call the natural man, and propose to find in him, in the native ordering of his being, a safe and sufficient ground for determining his universal though intricately varied obligation.[1]

[1] Professor Birks of Cambridge Univ., Eng., in his *Lectures on Moral Science*, defines happily thus: "Ethics is the Science of Ideal Humanity." — *Lecture* ii.

The phrase "the natural man" is used scripturally and theologically to mean the man in his present actually disordered state. To avoid confusion it should be understood that by the natural man we mean on the con-

Referring to the foregoing definitions of Ethics, we observe that a right in one person is correlative to an obligation in some other person. A right and an obligation exist only as they coexist; neither can be alone. But rights are logically prior; they condition and originate their corresponding obligations. For a right, being founded in the nature of its possessor, determines that there be a corresponding obligation; whereas an obligation cannot be conceived to determine a right. Hence we shall take the notion of a right as our

trary, here and throughout, not man as he is, but man as he should be, the normal man. So Butler, Sermon II, on *Romans*, 2 : 14.

Bishop Butler in the Preface to his Sermons, Whewell's Ed. p. xlii, in the passage beginning, "There are two ways," etc., presents an approved statement of the matter, substantially reproduced in the following:

"The question concerning the basis of morals may be put in two different ways, subjectively or objectively. We may ask, What is there in man that constitutes him moral? what do we mean by morality as an attribute of human nature? Or, on the other hand, What ground is there for morality in the nature of things, in the order and frame of the universe around and above us? The answer to the first question constitutes what is called *psychological ethics;* the second belongs to *metaphysical ethics.* The former method, that commonly pursued by British philosophers, addresses itself to our daily usage and self-acquaintance; the latter leads up to the first principles of knowledge, to those primary concepts and fundamental necessities of thought that lie behind our ordinary thinking and govern our mental operations unawares, and which form the subject matter of the highest and ultimate philosophy. We set out on the former line of inquiry, asking ourselves what are the facts concerning our ethical constitution, and how we are to interpret them. But we shall find that those facts point us beyond ourselves. The human consciousness is not self-sufficient nor self-explaining. The psychological question pushed far enough in any direction passes, beyond arrest, into the metaphysical. The soul cannot conceive of itself without some corresponding conception of the world and of God."—Professor Findlay, of Headingly College, Leeds. See also *infra*, § 25, where the psychological inquiry begins.

"The problem of Ethics is to set forth in general outlines the form of life for which human nature is predisposed. . . . This science is related to life as grammar is to language, æsthetics to art, dietetics to bodily life. It sketches the form of the possible and of the allowable, and these forms may be filled with different contents."—Paulsen, *Int. to Phil.*, Appendix.

point of departure for a search into the philosophy of morals.[1]

As already indicated, the matter that constitutes the content of Ethics is real truth. In order to become a science, its matter must be developed in logical form whose perfection is attained through clear, distinct, complete and consistent treatment. To approximate this ideal a methodical procedure is requisite. Beginning with observation, primarily of facts of consciousness gathered by introspection or furnished by testimony, and secondarily of the behavior of men in social relations, present and past, the intellect discovers in these phenomena the universally determinative notion of inherent rights, native and acquired, and therein discerns a formative principle, imperative in character, and constituting the common bond of obligation among men. This strictly universal and necessary principle is not inductively generalized, but is intuitively discerned. From it deductions are then made to subordinate truths, until these, arranged in a logical system, shall extend throughout all lines of human activity, and comprehend all modes of human obligation. Ethics thus constituted is a deductive science.[2]

[1] Moral, virtuous, excellent in conduct. From Fr. *moral;* from Lat. *moralis*, relating to conduct, from *mor* —, stem of *mos*, a manner, custom. Root uncertain. Derivatives, *moral*, sb., *morals*, sb. pl., *moralize*, "But what said Jaques? Did he not moralize this spectacle?" — *As You Like It*, ii, 1, 44; *moralist; morality*, "I had as lief have the foppery of freedom as the morality of imprisonment." — *Meas. for Meas.*, i, 2, 125; from Fr. *moralité*. — Skeat. Moral science or the philosophy of morals is synonymous with ethics. Cicero says: ". . . quia pertinet ad mores, quod ἦθος illi vocant, nos eam partem philosophiæ, De moribus, appellare solemus; sed decet augentem linguam Latinam nominare Moralem." — *De fato*, ch. i, 1.

[2] Theories of morals are primarily the authoritative or heteronomous and the autonomous. Heteronomy finds the origin and sanction of moral conduct in constraining precepts whose validity is derived from supreme authority, demanding submission and obedience without condition or question. It recognizes the Deity, the Church, or the State as lawgiver. The

In this essay the First Part treats of the source and character of Obligation. Its view is confined to the moral bond subsisting in the simple relation of man to man in entire parity and reciprocity. The Second Part treats of the varieties of obligation arising from the varieties of relation due to the Organization of men into complex associations.

theological and ecclesiastical view traces obligation to the revealed will of God as ultimate, maintaining that a course is good and right simply because he wills it, and that if he willed otherwise its morality would be otherwise (Crusius, Grotius, Descartes). The political view discerns ultimate authority in the enactments of the State (Hobbes, Kirchmann).

Autonomy finds the origin and sanction of morality in spontaneous, original, independent cognitions and impulses. It subdivides into apriorism or nativism or intuitionism, and empiricism whose specialized form is evolutionism. The apriorist founds morality on an original, innate, intuitive activity; the empiricist refers it to experience, or to a gradual development. Among apriorists we reckon Cudworth, Clarke, Kant, Fichte, Lotze; among empiricists, Spencer, Wundt.

Empiricism in the special form of evolution, to which allusion has already been made in § 20, is widely approved in the philosophic ethics of to-day. Evidently it is an hypothesis of psychogenesis, of historical psychology. But we question "whether ethics really has any necessary interest in an historical and psychological inquiry into the origin of ethical judgments. A normative discipline, an art of volition and action, can gain nothing either for the validity or for the systematization of its norms and precepts from the proof of their gradual development under a variety of conditions and influences. . . . Evolutionism is an hypothesis, not a norm; it gives an explanation of particular facts, but no precepts or laws by which to regulate our conduct; and hence the antithesis of intuitionism and empiricism is not of essential significance for Ethics." — Külpe, *Int. to Phil.*, § 27, 9. *Cf.* F. Bretano, *Vom Ursprung sittlicher Erkenntniss*, 1889; and C. M. Williams, *Systems of Ethics founded on the Theory of Evolution*, 1893.

The view of the present treatise is heteronomous in that it finds the basis of morality in the order of nature taken in its widest sense; autonomous or nativist in that it attributes to man the ability to interpret constituent nature, and discern his obligation to conform to its order. But the basis and genesis of morality, unless merely a historical, is a philosophical and not an ethical thesis. The problem before us is: Given the simple idea or notion of a right; to find all forms of obligation.

CHAPTER I

RIGHTS

§ 22. Every man conceives himself as having certain personal rights which he esteems of great worth, and guards with jealous care. Throughout life he is chiefly occupied with enlarging, confirming and defending them. They are a sacred possession which he zealously maintains, and whose loss or diminution he regards as degrading his manhood. This is one of the most striking and significant facts in the historical and current activities of mankind.

Thence arises much of the strife that continually agitates the world. Among barbaric peoples personal violence is commonly used to maintain or to recover what one claims to be his personal rights. Among civilized peoples courts of justice are established to determine the relative rights of contending parties, and an executive is empowered to enforce their decrees. Nearly all the litigation abounding in every nation throughout history is a contention for real or imaginary rights.

While each individual man has his own private rights, there are many of which he is possessed in common with other persons. The maintenance and development of common or public rights is committed to organized society, the tribe, the state, the nation. When the claims of one on another of these conflict or are questioned, diplomacy assumes to adjust the rights involved. This failing, recourse is had to war. Hence the innumerable battles that mark the tragic history of mankind.

§ 23. Evidently the notion of a right, since it is the source of such intense particular and social activity, has deep root in human nature. Also it is evident that, throughout the contentions to which it gives rise, there is an appeal to some common principle or law of widest generality, applicable to an infinity of cases, and of the highest practical importance in the progressive life of humanity. But inasmuch as this universal and overbearing law is for the most part obscurely discerned and imperfectly formulated, it is inevitable that men should differ often and widely in its application to particular cases. It is the province of Ethics to search out and formulate the law, and to unfold its general bearing on the several classes of its subjects.

To this end let us fix discriminating attention on the notion of a right. It is an abstract from personal relations, and catholic in them. Whenever and wherever two persons come into any mutually affective relation whatever, then and there come into being reciprocal rights, and consequent obligations. The abstracted notion of a right, being pure and simple, is as to itself incapable of analysis, and hence of formal definition. But we may examine its conditions, its correlatives, antitheses, and other implications, and thus clear the conception, and distinguish it by its invariable environment and limitations. This analytical process will disclose fundamental and determining elements, fixing clearly the scope and bearing of the notion, and evolving the formative principle and the law involved in its essence.

§ 24. Life is obviously a primary condition of any right. Only living beings have rights. The notion is incongruous to a stock or a stone. Among living beings, those alone can be conceived as having rights that are endowed with a consciousness involving at least volition, its primary element, conjoined with some degree of sensibility.[1] A right, then, is

[1] The new Psychology considers will as the primary and constitutive

a logical property, a mark that belongs to this, and to no other class of beings.[1]

But conscious life is not merely a condition of rights, not merely what must be in order that rights may be. There is in its very nature that which determines that rights shall be. They are of its essence. Thus every conscious being necessarily has rights by virtue of its ultimate constitution. It is not necessary that every one so constituted should be aware of the fact, either in detail or in general, not even in the most obscure way. But the higher orders of conscious beings recognize relatively to themselves the existence of rights

function of mind; intelligence, as a secondary development. The leader of this view is Schopenhauer (Willen in der Natur, *et al.*); followed by Schneider (Der Theirische Wille, 1880), Wundt (System der Philosophie, 1889, and Vorlesungen über die Menschen und Thierseele, 2d ed., 1892), Paulsen (Einleitung in die Philosophie, 1893), and many others. It sees the will arising, without perception or intelligence, as a blind craving or instinctive impulse, and thereon and thereby a gradual development of intelligence as a means to gratification. Thus a jelly-fish, a polyp, an infusory, knows nothing of itself, or of external things; a mere craving determines its vital activities. Gradually, in the progressive series of animal life, we see intelligence grafted on the will. To instinctive movements are added others guided by perception, and then by intelligent purpose involving deliberation and choice. Also every human being enters the world as a blind will without intellect. The nursling is all will; its voluntary movements are blindly instinctive. When a craving is satisfied, a feeling of satisfaction arises, otherwise a feeling of discomfort. In pleasurable and painful feelings, the will becomes aware of itself, and of its relation to an environment. Out of feeling, knowledge is gradually evolved, and in the more mature child the will appears saturated with intelligence. In this survey, the will is seen to be the original and constant factor of the life of the soul. At the close of the series, we find it directed towards the same great ends as at the beginning, the preservation and evolution of individual life and of the species. Intelligence is the secondary and variable factor, which is gradually imparted to the will as an instrument. So the voluntaristic as distinguished from the intellectualistic Psychology.

[1] The rights of man extend, however, beyond his natural life. Our ancestors still have rights, and posterity has rights, which the living are bound to respect. Yet life, past, present or to come, is a condition of this property. See *infra*, § 119.

in the lower orders, though these be quite destitute of the notion.[1]

§ 25. Every man has, elemental in his conscious life, certain powers of mind, and thence of body. These powers, faculties and capacities, belong to his nature, to his original constitution, and are essential in his make-up as a man, as a human being. They are, more specifically, conditions psychologically antecedent to the existence and apprehension of rights, and rights are the natural and necessary consequence of their existence. That is to say, powers and rights are natural, constitutional, original correlatives.

These native powers are distributed as modes of knowing and feeling, desiring and willing. The members of the latter couple constitute more particularly the practical side of human nature, and are intimately concerned with the existence and exercise of rights. Therefore on them especially we fix our present attention.

A desire implies an impulse, excited by the want, urging the will to an activity, relative to other powers, such as seems likely to result in gratification.[2] Every one is actuated by desires which thus motive his conduct. These sources of activity are the determinants of his welfare, and his rights have in them their ultimate ground. Hence it is only as his desires, either actual or potential, are infringed that his rights are affected; and to that for which he has not and cannot possibly have a desire, e. g., a villa in the moon, he has not

[1] The wide class of beings having conscious life includes the brute forms of animal life. That brutes have rights is beyond question, though they themselves have no knowledge of the fact. This is recognized by a merciful man; he does not muzzle the ox when he treadeth out the corn. Also it is recognized in many States by protective laws. See *infra*, § 68, note. Our proposed inquiry shall be limited, however, to beings of the highest order, and among these, more especially, to human beings.

[2] See *supra*, § 5.

and can never possibly have a right. Normal desires, or such as have an instinctive rise, and are in accord with the general order of nature, impel toward the fulfillment of the appropriate functions of the man in a world of persons and things. This consideration of its terms brings into clear view the truth of the principle: *A man has a right to gratify his normal desires.*[1]

Every volition or act of the will is immediately conditioned on desire; that is to say, no exercise of the will can occur except by virtue of an antecedent desire which as a motive impels it to action. But notwithstanding this dependence, the will is to be regarded as central in the personality, since it has the function to control, modify, suppress or arouse the

[1] Principle, a beginning, a fundamental truth or law, a tenet, a settled rule of action. From Fr. *principe*, from Lat. *principium*, from *princeps*, chief. — Skeat. Cicero says: "Principio autem nulla est origo, nam ex principio oriuntur omnia; ipsum autem nulla ex re alia nasci potest; nec enim esset id principium quod gigneretur aliunde." — *Tusc. Disp.* bk. i, ch. 23, § 54. Aristotle distinguishes seven different senses of the word ἀρχή, a beginning or first principle, then adds: "Common to all first principles is the being the original from whence a thing either is, or is produced, or is known." — *Metaphysics*, bk. iv, ch. 1. The term ἀρχή was introduced into philosophy by Anaximander. — Ueberweg, *Hist. Phil.*, § 13.

A principle is also a designation of order; a principle of nature is a designation of natural order, physical or psychical; a moral principle is a principle of nature which, in view of possible alternatives, takes imperative form, enjoining one, forbidding the other.

Normal, according to rule. A late word. From Lat. *normalis*, from *norma*, a carpenter's square, rule, pattern; Gk. γνώριμος, fem. γνωρίμη, well-known; cf. γνώμων, an index; all from the root *gna*, to know. — Skeat. A thing is normal when strictly conformed to those principles of its constitution which make it what it is. See *infra*, § 35, second paragraph.

Let it be here observed in anticipation of subsequent matter that a man's malevolent desires, as anger, envy, jealousy, misanthropy, are in general abnormal in kind, since they do not conform to the normal principles of the human constitution; and that his benevolent desires or affections, which are normal in kind, may in general become abnormal in degree, either by inanity or by excess, temporary or permanent, and need to be invigorated or restrained.

activity of all other powers, including even its conditioning desires. Freedom consists in the possibility of this voluntary exercise of one's powers, and it is evident that without freedom their normal functions cannot be fufilled, or that freedom is necessary to the natural working and development of the entire personality in its existing relations. These considerations bring to light the truth of the principle: *A man has a right to a free use of his native powers.*[1]

The two statements are not to be taken as distinct principles. Together they constitute the mutually dependent and complementary parts of the consistent whole: *A man has a right to a free use of his native powers in the gratification of his normal desires.*

This principle is the basis of Ethics. It is axiomatic, self-evidently true, not needing or admitting any logical proof; for the intuitive, synthetic *à priori* judgment involved in the pure notion of a right finds its immediate application to the desires and volitions. At first view it may appear thoroughly egoistic or selfish in character, but the outcome of a patient and thorough scrutiny of its bearings will reverse this primary impression. Likewise its formal universality may seem to sanction unbounded license, but the close inspection to which we shall submit it will discover very stringent limitations, not arbitrarily imposed, but arising from the matter of its constituent terms, and leading to a disclosure of our varied obligations. Thus there is no need to look beyond the natural and original constitution of man, despite its

[1] "Not only will all these [principles] be found in the enacted laws (*νόμοις*), but nature herself has marked them out in her unwritten laws (*νομίμοις*), and in the moral constitutions of men."— Demosthenes, *De Corona*, § 275, Teubner.

"Selbstverständlich ist das ursprüngliche Recht der Freiheit, d. h. des freien Gebrauchs seiner Kräfte und der freien Wahl der Ziele, worauf sie gerichtet werden. In der Gesellschaft unterliegt dies Recht, wie jedes, Beschränkungen." — Lotze, *Grundzüge der praktischen Philosophie*, § 42.

weakness, perversion and distortion, to discern the prolific principle of morality.[1]

[1] See *supra*, § 21. "In Plato's *Republic*, as in Butler's *Sermons*, the human soul is represented as a system, a constitution, an organized whole, in which the different elements have not merely their places side by side, but their places above and below each other, with their appointed offices; and virtue or moral rightness consists in the due operation of this constitution, the actual realization of the organized subordination. We may notice, too, that Plato, like Butler, is remarkable among moralists for the lucid and forcible manner in which he has singled out from men's springs of action the irascible element (his Θυμοειδές; Butler's *Resentment*;) and taught its true place and office in a moral scheme." — WHEWELL, *Preface to Butler's Sermons*, p. xxxiv.

"The foundation of Aristotle's system of ethics is deeply laid in his psychological system. Upon the nature of the human soul the whole fabric is built up, and depends for its support. According to Aristotle, we are endowed with a moral sense, αἴσθησις, a perception of moral beauty and excellence, and with an acuteness on practical subjects, δεινότης, which, when cultivated, is improved into φρόνησις, prudence or moral wisdom."—BROWNE, *Analytical Introduction to Nic. Eth.*

The doctrine of the Stoics is very similar. The supreme end of life is a life conformed to nature, ὁμολογουμένως τῇ φύσει ζῆν, the agreement of human conduct with the universal law of nature, of the human with the divine will. Zeno defines the ethical end to be harmony with one's own nature; Cleanthes, with the nature of the universe; Chrysippus, with our own nature and that of the universe together, our nature being but a part of universal nature. The formula of Chrysippus is: κατ' ἐμπειρίαν τῶν φύσει συμβαινόντων, or ἀκολούθως τῇ φύσει ζῆν; that is: Live according to your experience of the course of nature. This anthropological conception of the principle of morals was adhered to by the later Stoics, as in the following dictum of Clement of Alexandria, one of the latest: τέλος εἶναι τὸ ζῆν ἀκολούθως τῇ τοῦ ἀνθρώπου κατασκευῇ; that is: The end of man is to live agreeably to the natural constitution of man. — UEBERWEG, *History of Philosophy*, § 55.

"The moral law is not foreign to our nature; it is not imposed upon us by a despot, as was the Continental Embargo at the beginning of this century, barring the approach to a thousand goods and pleasures. It is rather the law of our own being. Moral laws are natural laws. We may assign to them a transcendental significance or not; they are, first of all and at all events, natural laws of human life in the sense of being the conditions of its health and welfare. According to the natural course of events, their transgression will bring upon nations as well as upon individuals misfortune and destruction, while their observance is accompanied by welfare and peace." — PAULSEN, *Int. to Phil.*, bk. i, ch. 1, § 3.

§ 26. In view of their objects it is usual to name three kinds of rights: the right to life, the right to liberty, the right to property.[1] This division appears in the three fundamental verbs: to be, to do, to have. But the species are not independent, for each involves the other two as complementary correlatives.

It follows that either two may be regarded as modified forms and be expressed in the terms of the third. Thus, for instance, life without some measure of liberty in the use of instrumentalities, could hardly claim the name.

Also, life and liberty are commonly spoken of as forms of property; as when one says, my life, his liberty. Indeed rights in general are viewed as forms of property in the familiar phrases, my rights, our rights, their rights. We correctly say that every man has rights, he owns them, he is their proprietor. Some rights he may dispose of at will, others are inalienable except by forfeiture; but, so long as they inhere in him, they are his possession, his own. The sense of proprietorship in rights is very strong, as seen in the tenacious retention and persistent defense of them when menaced.[2]

Likewise the several kinds of rights may be reduced to the right to liberty. Conscious life is an aggregate of active powers, and a power is a possibility of change. A right to

[1] "All men are by nature equally free and independent, and have certain inherent rights, of which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyments of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."—*Virginia Bill of Rights*, § 1.

[2] Psychologically the notion *mine* comes before the notion *me*. — Lotze. Even *behavior* is etymologically *a having*. To behave is a mere compound of the verb *to have* with the Anglo-Saxon prefix *be-*, to surround, to shut up, to possess. So conduct is behavior; from Lat. *conductus*, pp. of *conducere*, from *con-*, for *cum*, together, and *ducere* to lead; to bring together, to collect. — Skeat.

life is a right to exercise these powers, a right to self-determined change, which is liberty. Also property in external things means liberty to make use of them. To be dispossessed of any property is to be deprived of this liberty; but the thing is still one's own, and the right to its free use, though suspended, remains. Thus ownership in external things is a right to liberty.

Of these reductions, the last, though least familiar, is most clearly real, and of widest and deepest import. Hence, while we cannot avoid using the language of possession, we shall adhere to the view that every right, in its last analysis, is a right to some phase of liberty, to the untrammeled exercise of ability.[1] Manifestly the cardinal element in the principle already formulated is a right to liberty in this general sense, and on it our further consideration shall chiefly turn.

[1] "Liberty and Right are synonymous; since the liberty of acting according to one's will would be altogether illusory if it were not protected from obstruction. There is, however, this difference between the terms. In Liberty the prominent or leading idea is the absence of legal restraint, whilst the security or protection for the enjoyment of that liberty is the secondary idea. Right, on the other hand, denotes the protection, and connotes the absence of restraint."—AUSTIN, *Jurisprudence*, § 445.

CHAPTER II

LIBERTY

§ 27. Freedom means the absence of causal restraint or constraint. It is a function purely negative, yet a special subjective property of volition. It is the power of choosing. Causative determination is incompatible with the existence of choice, for in causation there is no alternative, whereas in choice an alternative is essential. The power of choosing is simply the ability to decide freely for one act or line of conduct rather than for its possible alternate.

Whether or not there be in reality a power of choice is an old and difficult question in metaphysics. It has already been briefly considered, and the point made that the reality of choice is a necessary condition and hence a postulate of Ethics. Whoever is morally responsible must be free. Consequently we here assume that in all voluntary activity there is real freedom in measure sufficient for responsibility.[1]

[1] See *Supra*, §§ 8–10. Aristotle teaches that "morality presupposes liberty. This exists whenever the will of the agent meets no obstacles, and he is able to deliberate intelligently. It is destroyed by ignorance or constraint."— UEBERWEG, *Hist Phil.*, § 50. The matter is specially treated in the *Nicomachean Ethics*, bk. iii, first five chapters. The principle of all moral action is προαίρεσις, *i.e.* what is commonly termed choice, or the deliberately preferring one act or one course of action to any other on moral ground, under the direction of reason, νοῦς. It is this, he says, which determines the moral quality of an act, and distinguishes the habit of virtue. At the threshold of the investigation is the freedom of the human will, and on the establishing of this doctrine depends the whole question of human responsibility. See especially Grote's *Aristotle*, 2d Ed., 1880, ch. xiii, § 2.

§ 28. Certain limitations of freedom need now to be observed. Freedom lies in the power of choice, and in it alone. All other powers of mind are subject to causation, their activities being always definitely determined by causative antecedents. That choice alone is free is a simple fact in human nature, and a very narrow constitutional limitation of our original and originating ability; but it is the essential difference between a creator and the passive work of his hands. It renders possible not only moral obligation, but also an infinite variety of self-determined activities.

A choice resolved is intention. The intention accords with that desire to which preference is given by choice.[1] The elected desire, if it be for action, induces a voluntary effort whose end is the object desired. This effort consists solely in an act of attention. The fixing attention more or less intense on a chosen object is the total of possible voluntary energy. We observe here a second very narrow constitutional limitation of human ability. Still this power of attention proves sufficient for the purposes of life, and for fulfilling the demand for moral action and conduct, since by means of it we are capable, directly or indirectly, of complete self-mastery.[2]

To the exercise of voluntary attention, since it is determined by choice, freedom is attributed. This freedom, however, is not absolute, but suffers restriction. That the exer-

[1] An exercise of choice is commonly viewed as directly resolving the question: Shall I do this or that?' The view is narrow, but the fact is even narrower. An election is not primarily between two positive alternatives, but between one positive and its negative. Shall I do this or not? Shall I act or refrain? If the decision is to abstain, then, secondarily, the election may occur between the other positive alternative and its negative. Very often, in deliberation, the two positives seem to be weighed directly against each other, as in two scales of a balance; but, on close analysis, it appears that there is but one scale, counterpoised by native inertia, in which scale proposed actions are weighed in quick succession.

[2] See *Elements of Psychology*, §§ 89, and 269 *sq.*

cise involves effort, a nisus or striving, shows the presence of obstacles within the mind itself. Evidently there is some mental inertia to be overcome, which checks and limits the action; otherwise there would be no occasion for effort, no point of application whereon to expend energy. Herein is a third limitation.

Mental effort is a force or cause, free in that according to choice it may or may not be put into play, and in that, if put into play, its intensity may be varied. Now the mental may be transformed into physical energy, and issue in muscular action. This, too, is accomplished through attention. To move my arm, I must have an idea of the arm and of it as moving. Fixing my attention thereon, and willing the realization, the arm moves accordingly. This is inexplicable. We know it only and simply from experience. But let it be observed that the direct control of the animal body lies exclusively in this power to contract, according to choice, the voluntary muscles, a limited class, thus producing motion of the limbs and some other organs, while very many vital activities, as pulsation and digestion, are beyond direct control. Moreover, when the movable organs are at liberty, still the extent of their motion is very closely circumscribed. This discovers a fourth very narrow constitutional limitation of free action, restricting or confining it to the ability to contract a muscle, and so to move a member through a small space. Still it is much, very much, to possess and to have at command a free physical force, free in that it accords with choice, which force we may use at will, combining it with fixed natural causes, varying its direction and small intensity, so as to arrest or modify the operations of nature.

It is a noteworthy corollary that this limitation to locomotion extends to the body as a whole, and to all external things. These we move from place to place, but this is the total of our direct physical efficiency. The planter moves a

spade and seed from one place to another; the forces of nature do the rest, producing the crop. The smith moves his hammer up and down, the weaver throws his shuttle to and fro; the outcome is fabricated by virtue of the natural forces inherent in the materials. A knowledge of natural forces, and an intelligent, purposeful placing of things so as to take advantage of them, enable men to manage factories, to tunnel Alps, to navigate oceans, to wrap the earth with iron, and to cover its face with cities. But in all his infinitely varied works, man has at command only the single free physical ability to place or displace things.[1]

§ 29. Freedom isolates each man from every other, setting him apart and alone in the universe. For this center of his personality is intangible, out of reach of any other being. By the gift of his image the Deity has made man to this extent independent of himself, putting it beyond his power to cause a human creature willingly to do otherwise than that creature may choose; since therein would be a contradiction. He may reason and persuade, command and threaten, but cannot causally coerce the man, for this destroys the essential conditions of personality; the man in such case is not a man, not a moral being. Much less may a fellow-man causally determine his choice. One may de-

[1] Lord Bacon wrote: "Man, whilst operating, can only apply or withdraw natural bodies; nature, internally, performs the rest."— *Novum Organum*, bk. i, aph. 4. Mr. J. S. Mill, apparently unaware of Bacon's aphorism, makes the point and expands it, with many illustrations.— *Political Economy*, bk. i, ch. 1, § 2.

"Son of immortal seed, high-destined man,
Know thy dread gift, — a creature yet a cause!
Each mind is its own center, and it draws
Home to itself, and moulds in its thought's span,
All outward things, the vassals of its will,
Aided by heaven, by earth unthwarted still."

stroy another's life, but not otherwise his personality. The freedom of man, within constitutional limits, is absolute.[1]

Freedom and liberty are synonymous terms, denoting the absence of causal determination. They are commonly used interchangeably, but it will be convenient here to use them distinctively. Freedom signifies the absence of causal determination antecedent to and effective of election and intention. It is strictly subjective. Liberty signifies primarily the absence of preventive causes subsequent to intention, of obstacles, impediments or hindrances that interfere more or less effectively with its successful accomplishment. It implies the untrammeled exercise of voluntary effort in its normal function of carrying out the intention. It is objective in that it has reference primarily and especially to external difficulties. A prisoner is entirely free in preferring release to continued confinement; but not until the door opens is he at liberty. The term is also applied in this sense to purely physical facts; as, an unscotched wheel is at liberty; a spark on powder liberates energy.[2]

[1] Says Epictetus, the philosophic freedman: "Put *me* in chains! No, no! You may put my leg in chains, but not even Zeus himself can fetter my will."

"Je n'ai jamais cru, quant à moi, que la liberté de l'homme consistât à faire ce qu'il veut, mais bien à ce qu'aucune puissance humaine ne lui fît faire ce qu'il ne veut pas."—ROUSSEAU, *Réveries d'un Promeneur Solitaire.*

[2] See *Elements of Psychology*, § 285. The distinction is rarely observed, and the neglect of it has in some instances led to erroneous doctrine. We remark that:

Freedom is essential in personality; Liberty, accidental;
Freedom is absolute; Liberty, merely functional;
Freedom appertains to choice; Liberty, to effort, and beyond;
Freedom implies free-will; Liberty, merely free-agency;
Freedom is negative of any causality; Liberty, of preventive causality;
Freedom contradicts necessity; Liberty consists with necessity;
Freedom is subject to morality; Liberty, to legality;
Freedom conditions proficiency; Liberty, efficiency;
Freedom is a primary, Liberty a secondary condition of obligation.

§ 30. The exercise of liberty or free action, in the sense just indicated, often suffers restrictions that diminish it, even to annihilation. Neglecting impossibilities and impersonal difficulties, we shall consider only those restraints that arise from the conflict of other wills.

One person may effectively interfere with the liberty of another by using his own muscular force, either directly or by setting obstacles to bar the way. The man thus assailed may be overpowered by stronger handling, and be fettered or imprisoned. Also he may be beset and embarrassed in his taking or keeping possession of property, in producing and imparting. Also any withdrawing or withholding of means which he might use to attain a chosen end, is an interference with his liberty. Such external interferences may occur in an infinite variety of ways, and are cases of causal determination.

§ 31. There is, however, a secondary sense, even more important and perhaps more frequent, of the use of the term liberty, in which it signifies the absence, not merely of causal restriction, but also of any inducement presented to one inclining him otherwise than he, if unassailed, would be disposed. When influences that are not causes are brought to bear on a man pressing him to choose otherwise than he would, modifying and sometimes reversing his original and characteristic preferences, this is properly regarded as a restriction of his liberty.

The process becomes clear upon a little consideration. The power of choice is obviously conditioned on cognition. There must be an idea of an action, and of its possible alternate. A judgment is rendered between these, and the choice accords with the weightier reason. Reasons are not causes. A man may be influenced in his choice by them without loss as to his personality, and indeed his every choice is subject

to rational determination. The reasons for one alternative are more influential than those for the other, and he freely, of himself, chooses the former. It is not at all requisite that the prevailing reasons should be what might be called good reasons; they may be very bad, poor, trifling, or even absurd reasons; nevertheless they are the rational determinants with which the choice accords.[1]

Now, a man may not effect, but he may affect another's choice by presenting such reasons as shall operate through the desires to influence his course. This is done obviously by argument; also one obviously influences by persuasion the decisions and conduct of his fellows. Even greater in extent is the influence of instruction, as in the education of children. Indeed, in the whole process of education, we influence powerfully the general disposition, character, and course through life of other persons, thus putting permanent restraints upon their liberty. So also in social and political relations, and in religion, restraining influences, or interferences with liberty, are constantly exerted by the presentation of reasons.

Another way of embarrassing the will, and so checking liberty, is by reason of threatened harm, as seen particularly in the penalties of the law. The police, the court and the penitentiary offer a constant reason for conformity to law. The footpad, who presents the alternative of your money or your life, thereby proposes a reason usually sufficient to determine in favor of yielding the purse. A plea of duress is allowed by the courts in discharge of engagement, or in mitigation of penalty. Any menace inspiring apprehension interferes with liberty, changing the preferable direction of

[1] See *supra*, § 10, note. Reasons are *causæ efficientes cognoscendi*, but are not at all *causæ efficientes essendi*. They should be clearly distinguished from the latter class, which is the usual meaning of the unqualified term cause. For the several kinds of causes see *Elements of Inductive Logic*, § 14, note.

action, or diminishing its range, without bringing to naught the possible alternative. The weightiest examples of such interference are to be found in political oppression, in religious persecution, and still more generally in war.[1]

§ 32. An important distinction now to be made is between those interferences, both external and internal, that are warranted and those that are unwarranted.

The state warrants its officers in the arrest and imprisonment, and even in the execution of offenders against its laws. It warrants the seizure of goods to satisfy judgments, the confiscation of private property for public weal, the levying of taxes for its own support, the conscription of citizens for military service, the bondage of a class as serfs or slaves. Also by stringent enactments it regulates industry in production and trade, restricts marriage and divorce, inheritance and bequest, and provides compulsory education. These and many other restraints on the original liberties of its subjects it imposes, and enforces, if need be, with a strong arm. Aside from those enjoined by the state, there are many formal restraints in the common intercourse of men which are warranted by social relations. To these may be added restraints within the family circle, especially those arising from the exercise of parental authority.

The foregoing restrictions of liberty are unavoidable. One may approve of and willingly comply with them, but his consent is not asked; he can neither refuse to accept them, nor escape by renouncing them. But there are also many avoidable restraints that exist by consent, as in contracts, promises, marriage, and membership in clubs, societies, institutions and

[1] The legal definition of duress is "the state of moral compulsion or necessity in which a person is induced, by unlawful restraint of his liberty or actual or threatened violence, to make a deed or contract or to fulfil one, or to commit a misdemeanor." See *Elements of Psychology*, § 273, note.

churches, whose requisitions are warranted by being legitimate and voluntarily conceded.

Very grave questions arise, and will be subsequently considered, respecting the ground of the warrant or right to bind. It is sufficient here to observe that the occasion and extent of warranted interference is determined by the relative rights of the parties. Granting the warrant in the various cases cited, it is evident that they represent a large and distinct class of restrictions in the range of personal liberty.

It seems, then, that every man is surrounded by legitimate checks on action, having warrant in the rights of others to whom he is personally related. He cannot transgress a certain circumscribed bound without infringing on their privileges, and he is debarred from doing so, as far as practicable, by their conflicting wills. Thus by the rights of others everyone's rights are limited. But within the limits thus set, any willful restraint upon one's liberty of action, either external or internal, being *ex vi termini* unwarranted, is a violation of his ultimate constitutional right to a free use of his powers in the gratification of his normal desires. On this class of interferences we proceed to bestow special consideration.

CHAPTER III

TRESPASS

§ 33. Having considered certain conditions and limitations of rights, we are now prepared to examine more particularly the basis and origin of the notion, together with certain other conditions, correlates and implications that mark the limits of interference in liberty.

The notion of a right, being pure and simple, is incapable of logical definition. Like all other pure notions it is immediately discerned upon an empirical occasion. The occasion for this intuition is the experience of a personal relation. It is a matter of common observation that we all stand in various and dissimilar relations to other sentient beings, as of man to man in reciprocal parity, of parent to child, of benefactor to beneficiary, of ruler to subject, and many others. Now, so soon as a human mind apprehends a relation between two persons, whether the observer be one of the parties or not, upon that occasion it immediately discerns the concomitant existence of mutual rights. Their special character and extent is not immediately discerned, but only that they exist.

The character and extent of the rights discerned are determined by the kind and intimacy of the relation between the parties. Whenever we undertake to pass moral judgment on any action, we examine and reflect upon the relation sustained by the persons concerned, and make this the basis of the judgment, approving or disapproving, mildly or strongly, as the case may be. We judge that a benefactor has a right to the gratitude of his rightful beneficiary; that

a subject has a right to the forbearance of his rightful ruler, who, in violating that right, becomes a tyrant. Thus rights vary with relations. Those of parent in child are different from those of child in parent; those of benefactor in recipient, from those of recipient in benefactor; and both differ from those lying in elder and younger brothers, and in master and servant. But in all such relations, however they may otherwise differ from each other, we see the existence of mutual rights, whose character and extent are determinable only by, and ascertainable only from, the nature of the relation. It is therefore held as an ethical principle that rights are conditioned on personal relations, discerned in personal relations, and determined by personal relations.

In attempting to unfold the ethical theory grounded on personal relations, we shall confine our attention primarily and for the most part to the simple and indifferent relation of man to man, in entire equipoise and reciprocity.

§ 34. A slight attention to the notion of a right discovers that it is conditioned on a social relation. A solitary man, one absolved from all fellowship, however entire his liberty, however abundant the means of gratifying many desires, has not, strictly speaking, any rights.[1] Now a right, since it exists only by virtue of a personal relation, near or remote, implies a liability of conflict between wills; at the least, the conceivable possibility of an interference in one's liberty by some other person. For example, a right to go involves the notion of possibly being hindered or opposed, not by the

[1] "To speak of natural rights as belonging to the isolated person (Einzelperson) is in itself false. By nature man has merely physical and spiritual capacities, and the possibility of exercising them; but he has a right to the last only in society. . . . A right can only be called natural, in so far as it is not gained through special title, but in so far as it is enough to be a man among men in order to know that others are obligated to respect it."—Lotze, *Grundzüge der praktischen Philosophie*, § 32.

physical difficulties of the way, but by the counteracting will of some other person, which coming into play, the right to go is orally claimed, and perhaps violently exercised. Any right whatever that any man or people or nation may have, is held in view of a conceivable hindrance or obstruction on the part of others.

Let it be next observed that not every interference in one's liberty is an interference in his right. Warranted interference does not violate any right, but only unwarranted interference. The notion of a right implies that any intelligent interference with its free exercise is unwarranted, which interference is a wrong. Now a right and a wrong are logical antithetical correlatives. The notion of the one necessarily carries with it the notion of the other, like as the notions of straight and bent, of order and disorder. A wrong, however, is conditioned on a right; that is, a right must be in order that a wrong may be. Whenever, then, a person knowingly and willingly interferes in my right, checking or preventing or making vain my effort to realize it, thereby restraining the free course of my powers in seeking to gratify my normal desires, he does me a wrong. Thus a wrong is a violation of a right, and it again appears that a right can exist only in view of its conceivable violation, a possible wrong.[1]

[1] "Right (Lat. *jus*) as a substantive, a right or rights, denotes a claim of one person against the infringement of others, or a possession which can be defended against aggression. It is illustrated in such phrases as the right to life, the right to vote, human rights, etc., and essentially means that force may be legitimately used in the defense of it, though there may not always be an obligation to do so."— Hyslop, *Elements of Ethics*, ch. iii, § 3.

A helpful distinction, taken by the Civilians writing subsequently to the revival of Roman Law, is between *jus in rem*, a right which avails against persons generally, and *jus in personam*, a right which avails only against particular persons.

One instance of the former kind is ownership or property, which is "the right to use or deal with some given subject, in a manner, or to an extent,

§ 35. The principle that every man has a right to the free use of his powers in gratifying his normal desires,[1] may be stated thus: Every man has a right to the free use of his powers *in so far as he does not interfere in the rights of any other;* that is, does not violate the right of another, or does no one a wrong. We have just seen that the right of either party exists only in view of its conceivable violation by the other. The modified expression of the principle brings out the point that rights in different parties limit each other; or that each of two parties has a sphere of rights which touches but does not intersect the sphere of the other.[2]

The necessary and universal limitation expressed in the foregoing modified statement of the principle, is merely a

which, though not unlimited, is indefinite." Another is *jus servitutis*, which is "the right to use or deal with, in a given or definite manner, a subject owned by another;" as, a right of way over another's land; a right, against any third party, of a husband relative to his wife, of a parent to his child, of an officer to his subordinate, e.g. a soldier, of a master to his slave, servant, or apprentice, and *vice versa.* A third is the right styled a monopoly, which is *jus in rem* though having no subject, that is, no specific person or thing over or to which the right exists, or in which it inheres. Of this sort is the exclusive right to a trade mark, and a man's right to his reputation or good name. *Jura in res* are all prohibitive, obligating persons generally to forbear or abstain from interference.

Instances of *jus in personam* are, a right arising from a contract or agreement or a simple promise, and a right of legal action, with all other rights founded upon injuries. *Jura in personas* are either prohibitive or requisitive. See Austin, *Lectures on Jurisprudence*, § 510 *sq.*, and § 1041 *sq.*

[1] See *supra*, § 25.

[2] Fichte, in his *Theory of Rights*, holds that: "Since no one with freedom passes beyond his sphere, and each one therefore limits himself, they recognize each other as rational and free. This relation of a reciprocity acting through intelligence and freedom between rational beings, according to which each one has his freedom limited by the conception of the possibility of the other's freedom, under the condition that this other limits his own freedom also through that of the first, is called a *relation of rights.* The supreme maxim of a theory of rights is therefore this: Limit thy freedom through the conception of the freedom of every other person with whom thou canst be connected." SCHWEGLER, *Hist. Phil.*, § 41.

partial explication of what is implied in the qualifying term normal occurring in the prior statement. Normal desires are those that strictly conform to the natural and original constitution of man, harmonize with his other powers, and accord with his relations to his fellows and to his general environment. Those are abnormal which have not this congruity. Normal desires, as acquisitiveness, are limited to such gratification as may be attained without interference in the rights of others. Abnormal desires, as covetousness, impel to action in disregard of the rights of others. It appears, then, that the latter statement of the moral principle modifies the former, not in content, but in expanded expression only.

§ 36. In the further treatment of this matter it will be convenient to use the word trespass, with some latitude of meaning, yet quite definitely. A wrong is any violation of a right; so is a trespass. The terms have identical extension, indeed are strictly synonymous. We have found that liberty is necessary to the exercise and realization of a right, and that a violation of a right is an interference in liberty. Also we have found that a warranted interference in liberty is not a violation of any right, not a wrong, not a trespass. It remains, then, that *a trespass is an unwarranted interference in liberty.*[1]

[1] Trespass, a passing over a boundary, a crime, sin, offense, injury; from Old French *trespas*, a decease, departure out of this world. The literal sense is a step beyond or across, so that it has direct reference to the modern use of trespass in the sense of intrusion on another man's land. From Lat. *trans*, across, and *passus*, a step. *Cf.* transgression, violation of law; from Fr. *transgression*, from Lat. *transgressus*, pp. of *transgredi*, to step over, pass over, from *trans*, across, and *gradi*, to step, walk. — Skeat.

In the *Pater Noster* we have: And forgive us our debts (ὀφειλήματα), as we have also forgiven our debtors (ὀφειλέταις.) — *Matthew*, 6 : 12. In *Luke*, 11 : 4 : And forgive us our sins (ἁμαρτίας); for we ourselves also forgive every one that is indebted (ὀφείλοντι) to us. The comment in *Matthew*, 6:14,

In legal definition a trespass is an unlawful act committed with force and violence, *vi et armis*, on the person, property, or relative rights of another. This narrow, technical statement is intended to designate those forms of trespass which are forbidden by civil law, and have a remedy or a penalty therein provided. But in common, free and correct usage the term includes many forms of offense of which civil law takes no cognizance, indeed any and every act that injures or annoys another, that violates any rule of rectitude or bond of obligation, and we here adopt this comprehensive meaning.[1]

is: For if ye forgive men their trespasses (παραπτώματα, from παραπίπτω, to fall beside or aside, to mistake, err), etc. It is evident that the several terms are used synonymously and interchangeably in a widely comprehensive sense.

[1] The contrast of the juridical and ethical definitions of trespass gives occasion to note the usual legal distinction between perfect and imperfect rights. Perfect or determinate rights, duties, obligations, *officia juris*, are those recognized and enforced by civil law. Imperfect or indeterminate rights, duties, obligations, *officia virtutis*, are those not recognized and enforced by civil law. The former, which we shall call jural rights, are the sole subject of Jurisprudence; the latter are customary and conventional, and being equally intrinsic, are included in the more comprehensive science of Ethics. The distinction is practically important as marking the existing limits of authorized jurisdiction; but it is accidental, not essential, and hence of little or no theoretical value.

The phrase perfect right indicates merely that an existing right has been recognized, defined, and made the subject of judicial decision or perhaps of statutory enactment. It is thereby perfected in the sense of being established and protected; and it has gained weight, since to the original merely human right is added the right of a legal subject or citizen. But it should not be understood that an imperfect right, one lacking this authorization, is in itself defective. Imperfect rights are often of greater weight and sanctity than many perfect or jural rights; *e.g.*, those intimate within the family circle, and many others likewise non-jural or merely customary. Hence the nomenclature is misleading and unfortunate. There is in fact a vast variety of untold rights which civil law cannot protect and therefore does not recognize. In the common intercourse of men, their personal relations are so manifold and intricate, so various and variable, that specific definition of rights and trespass is impossible, except in a comparatively few marked cases passing from latent to patent. Very much is necessarily left to the voluntary respect

Our wide definition gives occasion for another verbal variation in the statement of the moral principle, thus: A man has a right to the free use of his powers, *provided he commit no trespass.* On further examination we shall find that this provision sets very narrow bounds to rightful liberty; indeed that there is no proper liberty that does not conform to the limits and consist with the bonds of morality.

§ 37. The limit which moral principle puts to the gratification of desire, that it must not involve a trespass on the right of any one else, gives rise to many and grave practical difficulties. The line between me and my neighbor which neither should overstep, is often invisible and intangible. To settle it requires, in a numberless variety of cases, very thoughtful and careful consideration in which a respect for personal right must dominate the greed of personal interest. In the intricate, pressing, and ever-changing relations of men in society, it is almost impossible to guard and keep intact one's own rights, and to avoid a transgression of the bounds set by the rights of others. Contentions inevitably abound. Thence arise vast and costly systems of judicature among all civilized peoples, systems that become more and more intricate as civilization progresses, involving numerous courts of authoritative decision, whose business is little else than to mark the bounds of rights, and to enforce the law of trespass in its infinitely varied applications.

The practical difficulties attending questions that concern trespass on rights, may be lessened, especially as to our pri-

for rights, and for the universal unwritten law forbidding infringement on them, which law prevails in all communities of moderate moral culture. This has developed the English Common Law, whose excellence Aristotle anticipates, saying: "Customary laws have more weight, and relate to more important matters, than written laws; and a man may be a safer ruler than the written law, but not safer than the customary law." — *Politica*, bk. iii, ch. 3, § 17, Jowett's trans. *Cf.* Calderwood, *Hand-book of Moral Philosophy*, Pt. I, ch. 5, § 5 *sq.* (ed. 1872).

vate conduct, by clearing the conception in certain respects. To this end the following observations will be helpful.

Conflicting claims are seen on every hand, but rights never conflict. They touch each other, but never overlap. They limit by excluding each other, and indeed have no other limitation. The same right cannot pertain to different persons; and different rights, however similar, are always consistent. Wherever there is contention, there is trespass; somebody is doing a wrong; somebody is interfering in the rightful liberty of some one else. Even rights that are shared, and so-called common rights, do not and cannot conflict, but are entirely consistent in their exercise. Everybody has a right to drive on a public road, but not so as to interfere in the like liberty of any other.[1]

Original rights are inalienable in the sense that one cannot be unwillingly deprived of them, except by the extinction of the objects in which the rights inhere, thus rendering their exercise impossible, which is extreme trespass, as in murder, arson, and the like. One may be dispossessed of property, and otherwise violently limited in liberty, but the right remains whole, complete, intact so long as its object continues to exist. Derived rights or such as have been conferred by parental, civil, or other authority, may in many cases be withdrawn by resumption of the grant, by confiscation, or by exercise of eminent domain.

Rights in general may be alienated by the possessor himself transferring or forfeiting them. Property rights may be transferred by exchange, gift or bequest. Property may be alienated also by misdemeanor, the court imposing fines.

[1] It is quite commonly supposed that a person often has a right to do either of two things as he may happen or please to choose. But on a close analysis, as we shall hereinafter see, it appears that in every case the right is limited to one of the two alternative actions, the other being, directly or remotely, a greater or less trespass on some related person. Contrary or opposed rights cannot coexist either for the same or for different persons.

Liberty of person may be forfeited by crime and the criminal imprisoned, or all liberty with life extinguished on the gallows. Being warranted, therein is no trespass.

§ 38. For more specific illustrations of rights in their subjection to trespass, we shall now briefly consider the ground of property and its patent liability to trespass. Property rights are found, in the last analysis, to consist in the original right of every man to the free exercise of his powers in the gratification of his normal desires. An infringement on them is an interference in this liberty, and so is a trespass.[1]

Much the larger part of any man's activity consists in appropriating, transforming, and using external objects. Natural objects, as land, fruits, ores, to which no one has an earlier claim, are withdrawn from the disposal of every other person, simply by the taking possession of them. For this act of taking possession, inasmuch as it does not involve a trespass on any one, is an original right, looking toward the gratification of normal desires. Things thus become private property, and any hindrance on the part of others to the taking possession is a trespass. Moreover, the proprietor must be left at liberty to transform his property, by his labor and skill, as he wills; the products arising therefrom being likewise his own, to be used freely in further production, or otherwise consumed. We shall find hereafter that all property is held in trust, to be used usuriously and consumed profitably, else the owner himself becomes a trespasser.

Many perplexing questions arise in the adjudication of

[1] "Freiheit bedeutet nur die allgemeine Möglichkeit des Gebrauchs unserer Fähigkeiten. Aber auch von jeder einzelnen Handlung gilt, dass sie ursprünglich respectirt werden muss, so lange nicht besondere Motive des Gegentheils vorhanden sind, und dass es daher sittlich unrecht ist, sowohl sie zu hindern, als auch sich so zu benehmen, als wäre sie überhaupt gar nicht geschehen. Hieraus folgen zuerst eine Menge kleiner Regelen der guten Lebensart, die wir übergehen, dann aber der Ursprung unserer Begriffe vom Eigenthum." — Lotze, *Grundzüge der praktischen Philosophie*, § 43.

property. It may be that an original appropriation is excessive, more than a fair share, and so a trespass beyond bound, but this is very difficult to determine. Moreover, it constantly happens that there are long pauses in the useful activity of the proprietor of certain material, because of the greater or less complexity of his plans, or from lack of continuous energy; still it is evident that during such indefinite pause, his right of property must be respected, and the material thus reserved be left unmolested for his future use. But if, within a time sufficiently great for the ordering of all circumstances, he give no sign of making that use, the right of property lapses; though it is needful that the invalidity of the claim be determined and decreed under special legal enactment. Finally, it is evident that, while possession is proof presumptive of ownership, material may pass from the possession of the rightful owner without loss or surrender of the ownership; and therefore, while the presumptive right of the possessor is to be recognized, it should be superseded by ownership established in action of trover.[1]

§ **39.** Setting aside felonies or high crimes, such as murder which utterly destroys all rights and liberty, and robbery which lessens the means of their exercise, the most familiar form of trespass is that kind of injury which is done to a man's land or house by intruding into it against his will. It is an old legal maxim that every man's house is his castle, and he is entitled to treat as an enemy any one who attempts to enter it without his consent. As to land, the owner is not bound to fence it, and whether inclosed or not, a neighbor is not at liberty to enter on it himself, or to permit his cattle so to do. For in all such cases the liberty of the owner in the use of his house or field is at least liable to infringement, is jeoparded, which is trespass.

[1] See *infra*, § 120.

It is perhaps not quite so clear that vice is trespass, yet sufficiently clear. Gambling is a transfer of property determined by an event whose occurrence is believed by all parties to the transfer to be due to chance.[1] Therein is a misuse of means, a transfer, without equivalent, of property held in trust for beneficial ends. This alone makes gambling or betting wrong, even in its lightest forms, when there is no unfairness and when the stake is small. Any disregard of the claim of others on a productive use of one's means, restricts their privileges, and thus is a trespass. Intemperance, the excessive indulgence of an appetite or of any desire, is an abuse, a weakening, a degradation of powers, to whose fully efficient service others have a rightful claim, and hence it is an overstepping the bounds of liberty, a transgression, an infringement on the privilege of other persons, a trespass. The vice of lying, the hearer having a right to the truth, is clearly, even when no further injury appears, a checking or perverting of the hearer's privilege. Slander is of like character, doubling the trespass in the injury to both hearer and subject, and in its grosser forms is a misdemeanor, liable to legal action for damages. Much more might be said on the ethics of vice, but it is sufficient here to point out that it is essentially trespass.

A great many actions of trifling consequence, and hence usually overlooked, have nevertheless essentially the nature of trespass. They differ from crime and vice in degree rather than in kind, all having the specific mark of unwarranted interference in liberty. When I have a right to go first, and another, who knows or might know this, steps in before me, my right is violated. Even if the attempt is thwarted by my stepping more quickly, still the integrity of my right, the entirety of my liberty, has suffered. One who walks through my garden without leave, or enters my door

[1] See *infra*, § 40, note ; and § 85, note.

unbidden, violates my right to be private. One who, without warrant of good reason, intrudes on my conversation with some one else, or interrupts my words to himself, breaks in upon my right of free speech. When we occupy the time or attention of another otherwise than he would, as by sending a letter or making a visit, we apologize by stating reasons that occasion and warrant the call. Any intrusion or intermeddling with what does not concern one, is a trespass. When I am in haste, and some one needlessly detains me, it is a trespass. Pressing the unwilling for a loan or donation, or for an endorsement of any sort, is an embarrassment, a trespass. Thus in the passing relations of men there are a multitude of ways in which one may hinder the preferred action of another, or turn its direction, thereby, lightly perhaps, yet essentially, committing a trespass. The conventional unwritten laws of mutual courtesy in social intercourse are regulative of private conduct and protective of private personal rights from personal trespass. Politeness is morality in trifles.

§ **40.** The foregoing mention of slander suggests a class of offenses touching personal dignity that calls for special consideration.[1] An impolite act or word to a person worthy of respect is a wrong, inasmuch as it unwarrantably interferes in his liberty. In order that one may use his powers freely a certain equanimity is necessary, a mental equilibrium. This is disturbed by even a slight affront, and he is embarrassed, his liberty of action is checked. Every upright man cherishes a certain measure of self-respect, and claims a corresponding degree of respect from his fellows, a respect pro-

[1] "In the kingdom of ends everything has either Value or Dignity. Whatever has a value can be replaced by something else which is equivalent; whatever on the other hand is above all value and therefore admits of no equivalent, has a dignity. Whatever has reference to the general inclinations and wants of mankind has a market value; whatever, without presupposing a want, corresponds to a certain taste, that is to a satisfaction in the mere purposeless play of our faculties, has a fancy value; but that which con-

portionate to his estimate of his own dignity or moral worth. These constitute his personal honor. It is very precious and very sensitive, for no one can fulfill high aims in life unless he preserve a calm equipoise of his faculties, and the observant deference of his associates.

If an affront be grave, such as giving the lie or other verbal insult, or striking a blow even without physical harm, it overthrows for an indefinite time the serene composure, if not the entire self-command, requisite to the unbiased exercise of one's faculties. Such indignity is intolerable. No doubt the resentment which arises instinctively often becomes excessive, putting into violent commotion the whole being, turning it completely away from preferred conduct, and inducing extreme acts, even such as involve the sacrifice of one's life. And indeed in many cases death is better than dishonor; for while death is the loss of all rights, dishonor may fix fetters and settle a slavery that is worse than all loss.

As a man himself defends his life, so he would himself defend his honor, his most precious possession, essential to a free life. The anger or resentment that naturally follows indignation is instinctive impulse to self-defense. It is normal, and therefore rightful in rational furtherance.[1] Too much cannot be said in favor of the sacred right and obliga-

stitutes the condition under which alone anything can be an end in itself, this has not merely a relative worth, which is value, but an intrinsic worth, which is dignity. . . . Skill and diligence in labor have a market value; wit, lively imagination, and humor have a fancy value; fidelity to promises and benevolence from principle have an intrinsic worth. . . . The worth of this disposition is dignity, rising infinitely above all value, with which it cannot for a moment be brought into comparison or competition without violating its sanctity." — KANT, *Metaphysic of Morals*, p. 64, R and S.

[1] "It is not natural but moral evil; it is not suffering, but injury, which raises that anger or resentment, which is of any continuance. The natural object of it is not one, who appears to the suffering person to have been only the innocent occasion of his pain or loss, but one who has been in a moral sense injurious either to ourselves or others." — BUTLER, *On Resentment*, *Sermon*, viii.

tion to defend one's rights, and especially one's personal honor. With the savage this passes over into malice and revenge, a trespass retaliated by a trespass. But two wrongs do not make right; this does not restore the prior state. Among civilized peoples the savagery lingers, particularly in the restricted form of dueling, for men are rarely willing to submit a question touching personal honor to a civil court or to a court of honor.[1] One's honor is a thing too sacred to be weighed in the scales, there is no possible counterpoise. It is to be personally defended, and in opinions which have prevailed, personally avenged.[2] But higher moral culture brings its subject to see that he is limited to defense, and to that mode of defense which will best prevent the trespass, or its repetition, or its imitation. Other remedy is rarely possible. It is hard to be angry, and sin not, yet such is the moral ideal.[3]

[1] In the proposed Arbitration Treaty between England and the United States, 1897, it was expressly reserved that differences involving the national honor of either party should not be adjudicated by the court of arbitration. See *infra*, § 85.

[2] The duello, a relic of barbarism, has its folly on its face. It proposes to defend honor by adding dishonor, and proves nothing but savage audacity. Dueling is a double crime, compounded of murder and suicide. Being an intent to kill with malice prepense, it is murder. Being a willful offering of one's life, it is suicide. That both parties consent is null, for neither has a right to offer his life. The crime is doubled again in the two parties to it. Trespass and the violation of trust can no further go.

Let it be added here that the vice of gambling is analogous. What dueling is to murder and suicide, that gambling is to theft and waste. It too is doubly doubled. The mutual consent, having no ground in right, is null. It is a transfer of property without title, an all around violation of trusts. See *infra*, § 85, note.

[3] "Retribution is agreeable to conscience; that is to say, the returning of a corresponding measure of reward or of punishment to a will which has occasioned a definite measure of weal or woe. It is to be observed, however, that while we can very easily deduce from the foregoing the moral obligation of gratitude, we cannot, on the contrary, by any means so immediately deduce our right to execute the punishment."

"Antiquity saw in the person merely a product of nature whose intel-

§ 41. The various kinds of offense to which we have referred are mostly modes of direct trespass, wherein an immediate action unwarrantably checks liberty. Let it be now observed and hereafter kept in mind that trespass is very often indirect, by mediate action or by inaction. Indirect trespass by inaction calls for special remark and emphasis, since the term is commonly used only in the positive sense of direct action.

Neglecting to pay a money debt when due is clearly an unwarranted interference in the liberty of the creditor; for he might use the money to gratify a normal desire, but is restrained and more or less embarrassed by the non-payment.

In general, any withholding, unless by free consent, of what it is one's right to possess is plainly akin to theft, and as truly a trespass. A promise of every rightful kind is to be kept, because it may have become a factor with the promisee in ordering his life, and he may be embarrassed by the disappointment of his confidence. A breach of promise doing serious injury is a recognized form of trespass, actionable at law. Lack of gratitude to a benefactor, omitting a meed of praise, failing to show the worthy such outward marks of respect as are conventional, neglecting to pay or to acknowledge any polite attention, these and the like are embarrassing, and hence modes of trespassing. If I am using my right of way, it is all one whether somebody else steps in

ligible aim must be to unfold itself as beautifully and happily as possible. Christian culture, which conceives of man as having a calling and a task allotted to him on earth by God, naturally finds in this the reason for regarding as wanton wickedness every willful abbreviation of such testing thus imposed upon him. Accordingly our conceptions of personal honor are different from those of antiquity. But although we still believe so much to be due to our honor, the significance of our belief nevertheless is that such obligations are owing not to us as definite individual persons, but to that conception of personality in general which has a living expression in us also, and to its worth in the connected system of the ordering of the world." — Lotze, *Practical Philosophy*, § 13, and § 33.

the way, or does not step out. In either case he is equally in my way. The act committed in the one case and omitted in the other, is in each a trespass, a restraint of my liberty, and hence the cases are morally identical.

The notion widely prevails that an indirect trespass, especially one omitting to fulfill an obligation, is less offensive than a direct trespass committing a deed violative of an obligation. This is a popular error. In either case, if intentional, there is a complete breach of obligation, a wrong, a trespass. Forgetfulness is more likely to have occurred in the former than in the latter case, but forgetfulness, though it may palliate, does not wholly excuse an offense. If the degree of offense be measured by the gravity of its consequences, even this will not favor a fault; for it is evident that very often a neglect of obligation may be as serious as any direct violation. A sentinel who fails to give alarm and thus to prevent surprise, is responsible for the disastrous consequences, and is condemned to capital punishment. A moral distinction between actions omitted and those committed is superficial and unessential.[1]

Sin is transgression of the law of God, disobedience to the divine command. We shall hereafter show that any trespass of man on man is trespass on God, violating his will, thwarting his purposes, checking the free course of his designs. There is also indirect trespass on him in neglecting his personal dues, and direct trespass in counteracting his ways. All disaccord with him, whether by action or by inaction, whether by sin of commission or by sin of omission, is an unwarranted interference in the divine furtherance of the world. Thus it comes to light that all trespass is sin, and all sin is trespass.

[1] See *Ezekiel*, 33: 6–8. *Cf. Matthew*, 21: 28–31.

CHAPTER IV

THE LAW

§ 42. Let intellective attention be again fixed on the primary notion of a right. Pure reason immediately discerns that a violation of a right, knowingly and willingly committed, is a breach of normal order, a violation of law. Also it discerns that this law, being violable, is not, like natural law, the designation of a constant order of facts that have no alternates; but the designation of an order of facts that ought to be constant, an order which, though violable, should be inviolate and universal.

Moreover, pure reason discerns the very important and special characteristic of this law, that it is obligatory on the potential transgressor. It is addressed to his will, laying upon it a binding obligation, obliging him to conform his actions to its behests. Accordingly it is recognized as an imperative, a command, an order enjoining order on those capable of disorder.[1]

The order herein designated and demanded is a constantly observant respect for the rights of others, forbidding any unwarranted interference in liberty, forbidding trespass. Its formula is: *Thou shalt not trespass.* This widely yet definitely interpreted is the completely comprehensive Moral Law, binding all imperfect persons without exception, and at all times, in all places, under all circumstances. Thus it is both catholic and strictly universal.

The moral law is independent of experience, except that

[1] See *supra*, §§ 17, 18.

experience must furnish the occasion for its discernment by pure intellect. It is not deduced from some higher law; there is none higher. It does not logically follow from the principle of liberty to gratify desire, but implies or is implied in that principle, and a mere unfolding of the essential content of either is all that is requisite for a clear apprehension of its truth.[1] Indeed the principle and the law are but varied forms of essentially the same necessary truth. As a principle, it is an immediate intuition of pure intellect, having the light of truth in itself. As a law, its universally binding authority lies in its intuitively imperative truth.

§ 43. The intuitive cognition of this fundamental, catholic, and universal law, is the sole function of the pure practical reason or conscience. Conscience is pure reason discerning moral law.[2] This faculty has the moral law for its exclusive object, and its exercise is the primary, original, antecedent condition of any moral activity whatever, without which liberty has no moral restraint, and volition no moral character.[3]

In thus identifying conscience with the pure practical reason, we give to the term a clear and sharp definition, fitting it for scientific use by distinguishing it from those other fac-

[1] On the distinction between implication and inference, see *The Theory of Thought*, p. 103; and *Elements of Deductive Logic*, § 78.

[2] See *supra*, § 2, and § 11. Also *Elements of Psychology*, § 267.

[3] Conscience, consciousness of good or bad. From Fr., from Lat. *conscientia*, from *con-*, for *cum*, together with, and *scientia*, knowledge, from *scienti-*, stem of pres. part. of *scire*, to know, orig. to discern. — Skeat.

Consciousness, *conscia sibi*, and Conscience, *conscia obligationis*, have the same etymology. For three centuries our language has had the separate terms, like the German Bewusstsein and Gewissen, both being contained in the Old English *inwit*, in the French *conscience*, in the Latin *conscientia*, and in the Greek *συνειδησις*, from *συν* and *ιδειν*, to see together. The Modern English and the German discrimination is an aid to clear expression, but the indiscriminate oneness in other languages is significant. It indicates that conscience is a special functioning of consciousness; that we have no proper consciousness of conduct except in terms of conscience.

ulties which, subordinately and occasionally, are concerned with moral matter, and whose exercise on such matter is quite commonly and confusedly spoken of as the exercise of conscience. Except the pure practical reason, there is no original, distinct, special moral faculty in the human mind.[1]

[1] Conscience in popular usage signifies any or all exercise of mind concerning the morality of action. The moral judgments are attributed to it, also the moral sentiments, and the moral impulse; as in the familiar phrases, a scrupulous or an inconsiderate conscience, a tender or hardened, an approving or upbraiding conscience, a restraining or constraining conscience. In such indefinite sense no scientific use can be made of the term. Moralists find a limiting definition necessary, but they do not altogether agree as to its comprehension. Many definitions include the moral judgment or decision respecting cases; some include also the moral sentiments (§§ 2, 3). It is not a disagreement in doctrine, but merely as to the extent of the meaning of a term in the exposition of doctrine. We gather for comparison a few definitions by recognized authorities, as follow:

"By conscience, or the moral sense, is meant that faculty by which we discern the moral quality of actions, and by which we are capable of certain affections in respect to this quality."— Wayland, *Moral Science*, bk. i, ch. 2, § 1.

"Conscience is the mental faculty or feeling which recognizes and reveals the distinction between right and wrong."— McCosh, *Divine Government*, bk. iii, ch. 1, § 4.

"A perception of the right, together with a feeling of approbation or disapprobation."— Cook, *Conscience*, Lec. i.

"Conscience is that power of mind by which moral law is discovered to each individual for the guidance of his conduct."— Calderwood, *Handbook of Moral Philosophy*, Pt. I., div. i, ch. 4, § 1 (ed. 1872).

"Nothing else but our own opinion or judgment of the moral rectitude or pravity of our own actions."— Locke, *Essay*, bk. i, ch. 3, § 8.

"The principle in man, by which he approves or disapproves his heart, temper, and actions, is conscience; for this is the strict sense of the word, though it is sometimes used so as to take in more."— Butler, *Sermon* i. "That principle by which we survey, and either approve or disapprove our heart, temper, and actions. . . . You cannot form a notion of this faculty, conscience, without taking in judgment, direction, superintendency."— *Idem*, *Sermon* ii.

"Conscience is man's practical reason, which holds before him his law of duty in every case, so as either to acquit or condemn him."— Kant, *Tugendlehre*, p. 205. "The consciousness of an inner tribunal in man, before which his thoughts accuse or else excuse one another, is conscience."

Let it be remarked that conscience, as herein defined, cannot err. The criterion of a pure intuition is its necessity and universality. Conscience in its intuitive discernment discovers what is necessarily and universally true, and this discernment, being intuitive, is infallible. It is not, however, itself a complete guide of conduct. It must be supplemented by the logical function of intelligence, by thought, deducing minor rules or the moral quality of particular actions. Thought may err, is peculiarly liable to error.[1] Herein is the explanation of the great diversity of moral judgments among men. The data of pure reason are the same in all human minds; but the judgments formed in the application of these data often greatly differ, because of illogical thinking. The liability to error is greatly increased by a common acceptance of traditional moral standards, expressed in ready-made rules, which, if not themselves erroneous, are often imperfectly comprehended and applied to cases beyond their scope. Thus certain individuals, or large classes of men, or nations, are said to have high or low standards of morality

— *Idem*, p. 293. "Conscience must be conceived as a subjective principle which declares our responsibility to God for our actions."— *Idem*, p. 295.

"Conscience is that act of the mind by which we apply to a particular case, to an action to be performed or already performed, the general rules prescribed by moral law."— JANET, *Elements of Morals*, § 10.

"There must be a voice of conscience which gives direction in particular cases concerning the praise-worthiness or blame-worthiness of an action presented before it."— LOTZE, *Practical Philosophy*, § 3.

"Die ganze Seite unseres Wesens, wodurch wir uns urteilend zu uns selbst als wollenden oder handelnden Wesen verhalten, heisst Gewissen." — PAULSEN, *Einleitung in die Philosophie, Anhang.*

1 See *Elements of Psychology*, § 219. "Right reason," Hobbes calls "true, that is, concluding from true principles rightly framed, because that the whole breach of the Laws of Nature [the Moral Law, see *supra*, § 18, note] consists in the false reasoning, or rather folly, of those men who do not see those duties they are necessarily to perform towards others."— *De Cive*, vol. ii, p. 16, note. On the diversities of moral judgment, see Lecky, *History of European Morals*, vol. 1, p. 93 *sq.*, Am. ed., 1870.

according to the degree of approach and logical conformity of these standards to the intuition of pure reason.

The moral intuition, like all others, may be cleared by discriminating attention to its occasions, abstracting from the empirical elements, and fixing upon the pure; and further, by distinguishing those abstract notions with which it is liable to be confused, as, for example, utility. In this manner only is conscience capable of improvement, of education. The accuracy and acumen of the logical faculty, by which the moral quality of an action is inferred, may be greatly improved by intelligent exercise, and thus furnish means for the refinement of moral character. The moral sentiments may be intensified and the moral impulse strengthened by indulgent activity, and the will may become more and more submissive to its law by habitual observance. Conscience, in its loose general meaning, has these several sources of culture; but in the narrow scientific sense here adopted, it is capable only of clearance.[1]

§ 44. Turning from the faculty by which the law is cognized to the law itself, we observe that this imperative truth is categorical.

There are two classes of hypothetical imperatives, each

[1] "Beings like ourselves, in a world like this, compounded of a soul and sense, wrought upon by wild, struggling forces within and without, require for tolerable existence, some ideal scheme of life, some law lodged in the understanding and informing the will. Otherwise we are lost at the outset, and bound for shipwreck as certainly as any vessel sailing into wintry seas without chart or compass, rudder or pilot. Morality is the chart, drafted by religion; rectitude is the compass; duty, the rudder; and conscience, the steersman at the helm. Only, in this case, pilot and rudder are not things separate from the vessel; it is the ship of life herself, thrilling with intelligence and purpose in every part, that bends her forces to the direction of her course, and wins her perilous way through reefs and quicksands, against buffeting storm and treacherous current, till she reaches the far haven where she would be."—Professor Findlay.

implying the practical necessity of a means to an end.[1] The condition in the first of these classes is problematical, being, though constant, not universal, but merely possible. Examples are found in the technical rules of art. If one would build a house, he must gather materials, employ skilled labor, etc. The condition in the second class is assertorial, being actual, constant and universal. Examples are found in the dictates of prudence. If one would be healthy, he must be temperate. More generally: If one would be happy, he must, etc. These rules and dictates command conditionally. There is no necessity that any one should observe them, except in case of his willing the antecedent, which, however, in the second class, every one actually does.[2]

But the moral law is a categorical imperative, commanding unconditionally. It is simply, Thou shalt, or Thou shalt not. There is no hypothetical antecedent expressive of a definite end to be attained. Moreover, its behest is in disregard of any special consequences, except in so far as these may enlighten the obligation. Tradition and custom may likewise illustrate its application, but they neither add to nor take from its authoritative *hoc age*. Its authority is in its irrefragable and universal truth, and its truth is in the essen-

[1] Several distinct kinds of necessity, commonly expressed by *must*, should be noted. These are as follow:

1. Philosophical; intellective, having no possible or conceivable opposite; *e.g.*, pure ideas and axioms.

2. Psychical and physical; causative, having no possible, yet a conceivable, opposite; *e.g.*, a percept, a falling stone.

3. Moral; volitive, having both conceivable and possible opposite; *e.g.*, obliged to keep a promise.

4. Practical; tentative, having problematic opposite; requisite as means to an end; *e.g.*, suitable tools.

5. Logical; probative, having sophistic opposite; requisite in order to truth; *e.g.*, the syllogism.

Cf. Elements of Psychology, § 119; and Calderwood, *Hand-book*, p. 91.

[2] See *infra*, § 95, note.

tial and ultimate nature of the facts. It demands an unconditional and immediate obedience as a moral necessity, always and everywhere, amid any and every combination of circumstances; a blind obedience, if in the dark; an intelligent obedience, if there be light; but always an uncompromising, unswerving obedience.[1]

§ 45. The law is sovereign, subjecting all personal powers.[2] Each faculty operates according to its own constitutional

[1] The foregoing distribution is from Kant's *Grundlegung zur Metaphysik der Sitten*, S. 38 *sq.*, R. and S. It may be presented as follows:

Imperatives, addressed to Will, are:

I. Hypothetical, implying practical necessity, good as a means.
   A. Problematical, possible, constant but not universal.
      Rules of art or skill;
      Technics, Economics, Rhetoric, etc.
   B. Assertorial, actual, constant and universal.
      Dictates or counsels of prudence;
      Pursuit of happiness.

II. Categorical, implying moral necessity, good in itself.
   Unconditioned and no ulterior end, constant and universal.
      Commands or laws of morality.

[2] It is commonly conceded that Butler, in his sermons *Upon Human Nature*, established the supremacy of conscience. He argues from the complex constitution of the soul, and the combination in it of higher and lower faculties, with their various and conflicting aims, that the control of a superior internal principle is indispensable. The title prefixed by Gladstone to § 19 reads: "Conscience *de jure* claims universal rule, if we follow the law of our nature." In this section occurs Butler's famous saying of conscience: "Had it strength, as it has right; had it power, as it has manifest authority, it would absolutely govern the world."

All this is quite as true now as it was a century and a half ago; but even by Butler's own definition of conscience (given *supra*, § 43, note), as a principle that surveys and approves or disapproves, the argument seems to apply not so directly to conscience as to the law which conscience discerns, or rather to the authority of which the law is merely the expression. It is not conscience, but the law, that is supreme, and a good will obeys, not conscience, but the lawful authority which it recognizes.

"The authority of conscience is not found in any predominating force belonging to it as a faculty, but altogether in the character of the truth which it discovers. The authority is not found in the nature of the faculty itself.

function, but it is not competent for its own guidance. All others are dependent on intelligence as a guide, and for the full and correct performance of this specific guiding function, intelligence is dependent on conscience discerning the law of conduct. All human activities, whether they issue in external expression or not, are thus subjected ultimately to the moral law.[1]

It is the peculiar, the exclusive function of the will to control all other powers, to bring them into normal and harmonious exercise. The sovereign law is therefore addressed to the will, the executive. It commands choice to conform to its behest. It demands the regulation of all inner activity, and thus the regulation of all outward action. It is the essential informing element in all mandates and minor rules of conduct; the hypothetical imperatives, described above as logically coördinate, being ethically subordinate, subject to its regulation. Even conscience itself is subject to its authority; the law, dimly seen, demanding the voluntary attention requisite to its being clearly seen in the fullness of its meaning, lest it be ignorantly violated.[2]

The faculty is a power of sight, such as makes perception of self-evident truth possible to man, and contributes nothing to the truth which is perceived. To the truth itself belongs inherent authority, by which is meant absolute right of command, not force to constrain." — CALDERWOOD, *Hand-book of Moral Philosophy*, Pt. I, div. i, ch. 4, § 5, (ed. 1872).

[1] "Besides subordinate rules, there must be a supreme rule of human action; for the succession of means and ends, with the corresponding series of subordinate and supreme rules, must somewhere terminate; and only that which is conformable to the supreme rule is absolutely right." — WHEWELL, *Elements of Morality*.

[2] "Practical reason shows us that the vocation and dignity of man is not ultimately rooted in knowledge, but in the volitional side of his nature. Here also lie the deepest roots of our being; in conscience, in the consciousness of the moral law, we become aware of our real essence. We possess the immediate certainty that the real essence of our being is grounded on reality itself, that we belong, not to nature as it appears to the senses and the understanding, but to absolute reality itself, and therefore come to be-

This claim of supremacy, demanding the unconditional subjection of the entire will, is more or less clearly recognized by every one. I see that it is law for me; I cannot ignore or reject its claim. Yet a will often disregards or rebels against this authority; and only when completely submissive and perfectly accordant can a will be pronounced wholly good. And "nothing can possibly be conceived in the world, or even out of it, which can be called good without qualification except a good will."[1]

§ 46. It has already been indicated that rights are grounded on personal relations, and that a discernment of the existence of rights takes place on an empirical occasion, on an observation of such relation in actual life, whether the observer be a party or not.[2] Now it is evident that personal relations

lieve in the absolute teleological order of things, in a moral world-order, of which the natural order is but an external reflection. . . . Hence I believe that the world is the revelation of an all-wise and all-good God, even though mine eyes fail to see him, and my understanding comprehend him not." — PAULSEN, *Introduction to Philosophy*, closing sentences; Thilly's translation.

[1] Opening sentence of Kant's *Grundlegung zur Metaphysik der Sitten;* which statement seems to have been fairly anticipated by Epictetus, who said: "Apart from will there is nothing either good or bad." See *Ency. Brit.*, vol. viii, p. 472. Subsequently Kant adds: "Ein guter Wille ist das Einzige, was an und für sich gut ist, er hat absoluten Wert, ganz unabhängig von dem, was er in der Welt ausrichtet und durchsetst." On this doctrine Janet remarks: "La bonne volonté est bonne par elle-même, et il n'est point nécessaire d'attendre les résultats pour la juger telle. La bonne volonté est donc le seul bien véritablement absolu. Or, si nous analysons l'idée de la bonne volonté, qu'y trouvons nous ? rien autre chose, selon Kant, que la volonté de faire son devoir; et faire son devoir, ce n'est pas seulement agir *conformément* au devoir, c'est agir *par* devoir; une conformité extérieure avec la loi du devoir n'a qu'une valeur *légale*, et ne prend de valeur *morale* que si elle est intérieurement accompagnée de la volonté de faire son devoir; la moralité ne consiste donc que dans cette volonté même." Subsequently he objects: "C'est confondre ici l'objectif et le subjectif. C'est faire sans le vouloir de l'état de conscience du sujet le principe absolu de la moralité." — *La Morale*, ch. 2.

[2] See *supra*, § 33, and § 42.

are strictly objective, and rights objectively determined; hence it follows that the moral law, being essentially implied in really existent rights, is objective in origin and character. It is true that human rights are more remotely grounded in human nature,[1] and men are spoken of as doing by nature the things of the law, as being a law unto themselves, as having the law written in their hearts. But this does not make the law in any measure or sense subjective. For man has a fixed, native constitution of both body and mind; he cannot make one hair of his head white or black, nor can he add to or take from his natural faculties, one of which is conscience, the eye reading the law written for him in his heart. This constitution, being independent of his subjective states, is as truly objective as is the solar system, and it is this objective constitution, acting in conformity with the existing constitution of nature at large, that is determinative of rights, of obligation, of the law.

Thus the moral law is, as to its origin, objective in the constituent order of the world. It does not originate within me, but beyond me. It is not given by me, but to me. It comes to me from without; it is adventitious. The law of causation, every event is caused, and the law of conduct, thou shalt not trespass, though the one be indicative, the other imperative, the one inviolable, the other violable, are alike in this, that each is independent of the mind apprehending it. Conscience is not autonomous, nor is the will. The law, objectively determined, is read by conscience, interpreted by the judicial faculty, and executed, under the moral impulse, by the will.

The objective character of the moral law is indicated by its independence of circumstances and its disregard of consequences. Yet still more clearly is this character evidenced in its sameness for all classes and conditions of men. Were

[1] See *supra*, § 25, and notes.

its character subjective, or were it liable to any subjective modification, there might be as many variations of the law as there are minds of men. But, being one and the same for all individual minds, evidently it is not enacted by them, but enacted for them. Also, since it is not at all affected by what one may think about it, every sane man being accused or excused by his fellowmen in disregard of his peculiar notions, it is clear that a law thus common and unalterable by any subjective treatment has the essential character of an objective reality.[1]

[1] "Two things fill the mind with ever new and increasing admiration and awe, the oftener and the more steadily we reflect on them : the STARRY HEAVENS above and the MORAL LAW within. I have not to search for them and conjecture them as though they were veiled in darkness or were in the transcendent region beyond my horizon ; I see them before me and connect them directly with the consciousness of my existence. The former begins from the place I occupy in the external world of sense, and enlarges my connexion therein to an unbounded extent with worlds upon worlds and systems of systems, and moreover into limitless times of their periodic motion, its beginning and continuance. The second begins from my invisible self, my personality, and exhibits me in a world which has true infinity, but which is traceable only by the understanding, and with which I discern that I am not in a merely contingent but in a universal and necessary connexion, as I am also thereby with all those visible worlds. The former view of a countless multitude of worlds annihilates as it were my importance as an *animal* creature, which after it has been for a short time provided with vital power, one knows not how, must again give back the matter of which it was formed to the little planet it inhabits. The second on the contrary infinitely elevates my worth as an *intelligence* by my personality, in which the moral law reveals to me a life independent on animality and even on the whole sensible world, at least so far as may be inferred from the destination assigned to my existence by this law, a destination not restricted to conditions and limits of this life, but reaching into the infinite." — KANT, *Critique of the Pure Practical Reason*, Conclusion ; Abbott's translation. *Cf. supra*, § 45, note.

Of this famous peroration Hamilton says : "I do not know a better example of the sublime." — *Metaphysics*, Lecture 46. It is an unconscious paraphrase of the nineteenth Psalm. The two productions strikingly contrast the poet and the philosopher, the heart and the head, the ancient and the modern.

§ 47. The law, in the form we have given, is negative: Thou shalt not. In this form, taken strictly, it forbids a large class of actions without enjoining any. Unquestionably this is its primary and most palpable aspect comprehending our most obvious obligations, the one most clearly and fully recognized in actual life. As prohibitory, it strikes the most uncultured intellect, is patent to the grossest comprehension, and impresses itself on the humblest capacity, making its appearance in the very awakening of the moral consciousness. This strictly negative or prohibitory aspect of the law is therefore worthy of specific consideration in this place, positive forms being reserved for subsequent examination.

From the law in its prohibitory form many deductions can be made to secondary laws, having less yet very wide generality, and retaining the character of strict universality. For example: Trespass is forbidden; Murder is trespass; therefore Murder is forbidden. In this simple syllogism, the major premise is an indicative form of the law intuitively true; only the minor premise needs support, which the slightest reflection furnishes; for the right to continue in life is the highest of rights, it being the condition of all others, and to kill unwarrantably, which is murder, is the greatest possible trespass, since it extinguishes all liberty, all possible enjoyment of any right. Maiming is likewise trespass, for it diminishes one's liberty to realize his rights; and therefore it is forbidden. Cruelty is pain-giving trespass; a wrong, not simply because it gives pain, but because it thereby unwarrantably interferes in liberty; it therefore is forbidden. Theft is trespass, a violation of the right of property preventing its free use; and therefore, Thou shalt not steal. These are very obvious yet typical cases.

The Decalogue, which the foregoing suggests, is usually spoken of as the moral law. It is eminently, but not ulti-

mately. Its ten-fold statement lacks the unity requisite to a philosophic reduction. Yet it is easily seen that each of the ten laws is a simple deduction from the one ultimate law: Trespass not. This is the basis. Consequently they are throughout negative, simply prohibitory. Let us add the observations, that these prohibitions are, in general, progressive from higher to lower offenses, and that all are objective, forbidding outward acts, except the last which is subjective, entering the mind or soul, and forbidding unrighteous desires.[1]

[1] On the points in the foregoing paragraph let it be remarked:

1. Canon Farrar, in his *Sermons on the Ten Commandments*, inverts the true order by entitling them "A Voice from Sinai, or the Eternal Basis of the Moral Law."

2. We are reminded of the Pythagorean Decad (*circa* 500 B.C.), wherein the scale of universal truth is symbolized by the series of numbers: ten, δεκάς, being their sum, thus:

$$\begin{array}{c} 1 \\ 1\ \ 1 \\ 1\ \ 1\ \ 1 \\ 1\ \ 1\ \ 1\ \ 1 \\ \hline \text{X} \end{array}$$

3. The first commandment forbids confronting Jehovah with other gods in opposition, set up as rival objects of service and adoration. Evidently it would be a trespass upon his exclusive right. The second forbids degrading the spiritual nature of God by graven images, and also forbids idolatry; for a worship through images inevitably becomes a worship of images. The third forbids perjury, a trespass on him in whose name an oath is taken, and to whom fulfillment is due. The fourth expressly claims the memorial Sabbath as his own; its violation is a trespass on this reservation. The fifth enjoins honor of parents, whose dishonor would be a trespass, not only on them, but also on him through his natural and visible representatives.

4. The fourth commandment is grammatically positive, but its appended interpretation is negative. The fifth is positive, if we construe *to honor* positively, but it may mean only *to respect*, which is primarily negative.

5. The progression in the first table, which concerns our relation to superiors, is from high treason against the divine King, down to disrespect for appointed human authority; in the second, which concerns our relation to equals, it is from murder, down to the subjective impulse to trespass, thus guarding the sacredness of personal life, of wedded life, of property, and of reputation.

6. A correspondence between the two tables may be noted. The first commandment in each relates to the extinction of all rights; the second in each, to their corruption, idolatry being often called adultery; the third in each, to the violation of a property; the fourth in each, to a reservation or claim; the fifth in each, to a right disposition.

The Ten Words are inadequate. A man may keep them all from his youth up, and yet lack. They are directed solely against sins of commission. They prohibit certain prominent offenses, but posit no explicit obligation of benevolence, no duty of love to God or neighbor. They were addressed originally to a people rude, uncultured, whose moral character was very imperfectly developed by its Egyptian experiences. They were for the time as much as could be borne. Had the law in its fullness been at once revealed, it probably would not have been understood, much less appreciated, accepted and practiced. In general, the Old Testament morality is negative and prohibitory.[1]

7. To the second and to the third commandment is appended a menace; to the fourth, a supporting reason, without which the violation would not, perhaps, appear so clearly a trespass; to the fifth, a promise. The fifth of the first table makes an easy transition from the divine character of the first table to the human of the second. In neither is any mandate of love to God or to neighbor. But see *Deuteronomy*, 6 : 5; and *Leviticus*, 19 : 18.

8. The naturalness of the Decalogue, its manifest rightness, and its universality, are well illustrated in the following heathen summary of the less obvious First Table. "Socrates, conversing with Hippias, asks:

Dost thou know, Hippias, any unwritten laws?

Those in every country, replied Hippias, that are held binding touching the same things.

Canst thou say that men made them?

Why, how could all men come together when they do not speak the same language?

Then who do you suppose made those laws?

I think, Socrates, that gods gave those laws to men; for with all men it is thought right first of all to reverence gods.

Is it everywhere thought right to honor parents?

It is so indeed." — XENOPHON, *Memorabilia*, bk. iv, ch. 4.

[1] Edersheim tells us that "the Rabbis divide the Law of Moses into 248 affirmative, and 265 negative, commandments." But this includes the Ceremonial, as distinguished from the Moral Law. Our Lord's comment on the prayer he taught his disciples (*Matthew* 6 : 9–15), emphasizing trespasses, *παραπτώματα*, is an echo of Old Testament morality. It expands the point, and this point only, perhaps as the one least intelligible and acceptable. See *supra*, § 36, note.

Civil law, under which phrase we include all laws recognized, enacted and enforced by an organized State,[1] is originally negative in its forms. Even after being greatly expanded, it is still very largely negative in expression and prohibitory in character. Especially is this true of the criminal code, which consists of a series of prohibitions of certain overt acts. As a science of human rights, civil law is occupied with classifying and defining the various rights of individuals, of corporations, and of communities in general. As an art of social regulation, it provides for the adjudication of particular cases, and the enforcement of judicial decrees. Throughout it is a system of enactments deduced from the universal and exhaustive law of trespass, which enactments are used as major premises in further deduction; the minor premises being the particular cases which the court is considering. Hence it is evident that, in essence, there are not many laws; there is only one law.[2]

[1] Civil law, in a general sense, the law of a state, city, or country; specifically, the Roman law, the municipal law of the Roman empire, comprised in the Institutes, Code, and Digest of Justinian and the Novel Constitutions. — BLACKSTONE. We use the phrase in the generic sense only, which corresponds to Kent's definition of municipal law in general, as "a rule of civil conduct prescribed by the law-making power of a state." — *Commentaries*, vol. I, p. 447. This includes *lex non scripta*, or Common Law, and the *lex scripta*, or Statute Law. It is co-ordinate with International Law, Constitutional Law, and Ecclesiastical or Canon Law. See *supra*, § 17, note. "The word civil has about twelve different meanings; it is applied to all manner of objects which are perfectly disparate. As opposed to criminal, it means all law not criminal; as opposed to ecclesiastical, it means all law not ecclesiastical; as opposed to military, it means all law not military; and so on. Even *jus privatum* is sometimes also called *jus civile*." — AUSTIN, *Jurisprudence*, § 1030.

[2] Moralists have much to say about "The Moral Law," but few venture to formulate it, thus failing to answer the all important question: What is the moral law? Some formulas that have been given will interest the reader.

"A reasonable being ought to act reasonably. . . . Hence, Obey reason." — HICKOK.

"It is right for men to use their powers for their natural (or rational)

§ 48. The law in its primarily negative sense, forbidding certain actions and requiring none, tends to isolate men, to set them apart from each other, to sever their natural relations. It says: Let your neighbor be, do not interfere in his liberty, do not step in his way or on his ground, respect his rights.[1] Accordingly, even among highly cultured people,

ends. This is the intuition, the immediate recognition of Moral Law. . . . That principle which determines what is right, determines what is law for me." — CALDERWOOD.

"Respect the freedom of others." — COUSIN.

"Limit thy freedom through the conception of the freedom of every other person with whom thou canst be connected." — FICHTE

"Be a person, and respect others as persons." — HEGEL.

"Act at every instant with thy whole moral energy, endeavoring to do thy whole moral work." — SCHLEIERMACHER.

"There is but one categorical imperative, namely this: Act on that maxim whereby thou canst at the same time will that it should become universal law." — KANT. See *supra*, § 44.

Of Kant's famous categorical imperative be it noted that, like several of the other forms given above, it has, as he himself says, no content, it is a form only. We venture the criticism that a law of conduct should tell us what to forbear or to do; it should have matter as well as form. Again, his imperative clearly has a tincture of the utility which he discards, in that it makes the consequences determine the right or wrong of actions; for, why can I not will theft to be universal? — because it would be ruinous. But, indeed, this imperative seems to be, not a law, but a rule by which to test conduct. I take a straight-edged rule or ruler, and laying it on my paper, draw a right line, or test one already drawn. Why is it known to be right? Because it conforms to the rule. Now this rule is not the law of a straight line. Its law, in the Cartesian co-ordinate geometry, is the linear equation $a\,x + b\,y = c$, wherein a, b and c are fixed numbers, and x and y variables; which is a very different thing from my wooden ruler. Likewise, a law of conduct, and a rule by which to guide or test conduct, are very different things. Kant's empty imperative is not properly a law; but it is a rule, by which we may know the moral quality of certain conduct by bringing to view its natural consequences, these not (*causæ essendi*) making, but merely (*causæ cognoscendi*) showing, its quality. For a violation of moral law results in evil, and *vice versa*, and when the application of the law itself to a case is obscure, the patent consequences will enlighten us. See *infra*, § 48, note.

[1] "The most original obligation of man in intercourse is that of leaving every other unmolested until that other has disclosed his purpose to enter

there are many who, while rigidly conforming their lives to the prohibitions of the law, apparently have no wider conception of obligation, and know no difference between legality and morality. Indeed there are some who regard the laws of the State, with all their manifest imperfections and narrow inadequacy, as marking the bounds of obligation, and consider it right to claim or do whatever civil law does not forbid, all unforbidden actions being permissible and supererogatory.[1]

A thorough analysis, however, of the conditions and implications of trespass, such as we shall subsequently undertake, discovers that the limitation to prohibition is inadmissible, that it is far from exhausting the moral principle, — that there is a positive aspect of this formally negative imperative, that the injunction placed upon trespass by the universal moral law is both a prohibition and a requisition, forbidding to do this but equally requiring to do that, and embracing all particular acts and general conduct.[2] The morality of the New Testament advances to this higher positive plane. It does not abrogate the earlier form of the law, but arises from it, demands active benevolence, and so exhausts the obligation of

into some intercourse. No one therefore has any right to force unsolicited services upon another; although each one is at the same time bound to behave with good will toward the intentions of every other, as soon as they are made known to him."— Lotze, *Practical Philosophy*, § 41.

[1] The Greeks held that the State should provide by legislative enactments for the moral education of the people. Accordingly Aristotle says: "What law does not command, it forbids."— *Nic. Eth.*, bk. v, ch. 11, § 1. On this, Michelet remarks: "The Greeks recognized the principle that it was the duty of their State to support the sanctions of virtue by legislative enactments; the moral education of the people formed part of the legislative system. Hence the rule which Aristotle states: *Quæ lex non jubet, vetat.* The principles of our [the German] law, on the contrary, are derived from the Roman law, which confines itself in all cases to forbidding wrongs done to society. Hence the rule with us is exactly the contrary: *Quæ lex non vetat, permittit.*"—*The Ethics of Aristotle*, p. 195.

[2] See *supra*, § 41.

man to man.[1] The influence of this positive presentation of the law effectively counteracts the isolating tendency of the

[1] Thus "The Royal Law, according to the scripture: Thou shalt love thy neighbor as thyself."—James, 2 : 8. *Cf.* the rule: "All things whatsoever ye would that men should do unto you, even so do ye also unto them; for this is the law and the prophets."—Matthew, 7 : 12. This contravenes the old *Lex Talionis:* Do unto others as they do unto you; and resounds in the Anglo-Saxon: Put yourself in his place. It has sometimes been mistaken for the moral law, perhaps because of the addendum, which, however, doubtless means: By this ye may fulfill the law. For evidently it is a rule merely, a form without content, a guide or test of conduct. Even as a rule it is inadequate, for it does not provide for: 1st. Duties to self; but in this we hold it correct; there are no duties to self (see *infra*, § 74, *sq.*). 2d. Benevolence; one might say, I want no alms, and so am not bound to give alms. The usual gloss, "in like case," is supposed to correct this, but it does not correct the next point. 3d. Legal justice; by it a judge should always discharge the accused. The gloss, "if it be right," begs the whole matter.* We note also that the rule makes self-love the test and measure of obligation; but so too does the royal law; probably, however, not the ultimate test and absolute measure, yet setting a mark we may hardly reach. Notwithstanding these exceptions, it is rightly called "The Golden Rule" for its intrinsic worth and practical value are of the highest. As a rule easy of apprehension, if not of observance, in the vast majority of actual cases, none can exceed its simplicity, its clearness, its wisdom, its excellence. Kant's categorical imperative (*supra*, § 47, note), taken as a rule, is superior in philosophical comprehension, but vastly inferior in practical application. We accept the one as The Golden Rule of Philosophy, and the other as The Golden Rule of Christianity.

In the Confucian analects, bk. xv, ch. 23, we find: "Tsze-kung asked saying: Is there one word which may serve as a rule of practice for all one's life? The Master replied: Is not reciprocity such a word? What you do not want done to yourself do not do to others." *Cf.* bk. v, ch. 1.—From Samuel Cox, on *Ecclesiastes*, p. 315. *Cf.* Legge, *Chinese Classics*, vol. i.

Isocrates (d. 338 B.C.) said: What you are angry at when inflicted on you by others, this do not do to others.

Aristotle (d. 322 B.C.), being asked how we should behave towards our friends, replied: As we should wish them to behave toward us.

* Henry More, in *Enchiridion Ethicum*, gives the following revision: "The good which you prefer for yourself in given circumstances, you ought to prefer for another in the same circumstances, so far as it is possible without injury to any third person." —*Noema*, 14, p. 29.

exclusively negative view, restores and strengthens the mutual relations of men, bringing them into fraternal fellowship, and uniting them by common and indissoluble bonds.

Tobit said to his son: Do that to no man which thou hatest. — *Apocrypha*, v, 15.

Hillel (d. 4 B.C.) said: Quod tibi ipsi odiosum est, proximo ne facias, nam hoc est tota lex. — *The Talmud*, as quoted by Wetstein.

Philo Judæus (d. cir. A.D. 45) said: One must not himself do what he hates to have done to him.

Seneca (d. A.D. 65) says: We should give as we would wish to receive.

The διδαχή or *Teaching of the Apostles* (2d century), followed by the *Apostolic Constitutions*, vii, 2, says: All things whatsoever thou wouldst not have befall thee, thou, too, do not to another.

These early forms are all negative, except that of Aristotle (about friends), of Jesus, and of Seneca. That the thought occurred to so many ancient sages indicates its natural origin.

CHAPTER V

SANCTIONS

§ 49. The human will originates actions in the sense that it elects one rather than another possibility, and does that instead of this. It is therefore rightly regarded as the first cause in a series of events whose subsequent members are its effects or consequences. As this mastery of the will is itself subject to the moral law, the causes and effects in the series are qualified as moral causes and effects. But let it be observed that causation in the mental or spiritual sphere is still causation, and in that sphere moral causes determine their effects as rigidly as, in the physical sphere, physical causes determine their effects. Moreover, such is the reciprocal relation between the spiritual and material spheres that an activity in either may be the cause of an event in the other.[1]

When a voluntary act takes place, I have determined it shall be this rather than some other. Until then the deed is merely potential, I am master, I have to do with it. When it becomes actual, then no longer have I to do with it, but it has to do with me. I cease to be the actor, and become an observer, perhaps a sufferer. What is done can never be undone. There may be counteraction, readjustment, restitution, compensation, but there is no restoration or erasure of the past. The act is unchangeable. It has passed from the domain of moral law and entered the realm of natural law, to become a first link in an irrefragable chain of causes

[1] See *supra*, § 10, note; and § 18.

and effects involving my welfare, perhaps completely and inextricably. Often a word unspoken is a sword sheathed at my belt; spoken, it is a drawn sword in the hand of my enemy.[1]

Experience in such matter brings reflection, and with it the wider observation and induction that conformity of volition to moral law is wholesome, non-conformity perilous, perhaps fatal. These good and evil effects constitute in general the sanctions of the moral law, they conserve its sanctity, ratifying and vindicating its authority, inducing obedience, that it may be unbroken, whole, holy, sacred in the eyes of its subjects.[2]

[1] "Be the stern and sad truth spoken, that the breach which guilt has once made into the human soul, is never, in this mortal state, repaired."— HAWTHORNE, *Scarlet Letter*, ch. 18.

"Every word and act is a portion of the living, breathing past, that having once been is immortal in its every part and moment, incarnating as it does the very spirit of immortality, an utter incapacity to change. As the act was, as the word hath been spoken, so shall act and word be forever and forever."— HAGGARD, *Jess*, ch. 30.

Cf. James, 3: 5–12; and *Proverbs*, 25: 11; also Homer, *Iliad*, bk. ii, 455, and bk. xi, 155; also *supra*, § 9, note.

[2] "A sanction, in the proper sense of the term, means nothing more nor less than a penalty incurred by a violation of a law. If a man systematically 'takes every pleasure as it flies,' he becomes liable to a physical sanction, or, in other words, pain, disease, death. If he transgresses the known law of the land, he comes under the political sanctions of legal punishment. If he defies the ordinances of society, he pays the penalty for his eccentricity in the social sanction of ostracism. But are any of these moral sanctions, moral penalties incurred by an immoral agent? Perhaps it will be enough to accept on this point the answer of Mill: 'The ultimate sanction of all morality is a subjective feeling in our minds.' "— *Edinburgh Review* for April, 1883, p. 236. See Mill, *Utilitarianism*, pp. 41, 42.

"The difference between sanction and obligation is simply this: Sanction is evil incurred, or to be incurred, by disobedience to command. Obligation is liability to that evil in event of disobedience. . . . It is not infrequently said that sanctions operate on the will. . . . It were more correct to say that sanctions operate on the desires. . . . The party obliged is averse from the conditional evil, . . . he wishes or desires to avoid it, . . . in order to this, he must fulfil the obligation. We are told by Hobbes, in his *Essay*

§ 50. Mandatory law has necessarily penalty affixed. Indeed the notion of the one seems to imply the other as of its essence; for the voice of command without power enforcing it would be mere *brutum fulmen, vox et præterea nihil.* Accordingly, in considering the moral order of the world, the order that ought to be, we find that any deviation carries with it penalty, or rather penalties, as its natural and necessary consequence. Let us now examine first those that are wholly subjective.

Subordinate to reverence for the law revealed by conscience is the sentiment of approbation or of disapprobation, correlative to the moral judgment approving or disapproving. These innate sentiments bear powerfully upon conduct, and thus constitute sanctions. Indeed they are the original, constitutional, and primary sanctions of the law. In the pleasure or pain, by which they are strongly marked, we discover native, subjective reward and punishment.[1]

The moral sentiments are so highly influential that their function is often exaggerated, and they are supposed to be sanctions in the sense of being a sure index and an authoritative exponent of the true moral character of an act or of general conduct. Many a man of high culture will assert his rectitude in a certain case because he experiences the pleasing

on Liberty and Necessity, that 'the habitual fear of punishment maketh men just, it frames and moulds their wills to justice.' The plain and simple truth is this; that it tends to quench wishes which urge to breach of duty, or are adverse to that which is *jussum* or ordained."—AUSTIN, *Jurisprudence*, §§ 650, 655.

[1] See *supra*, § 4. "The intensity and ardor of these sentiments in the healthy mind, the singular delicacy, variety, and complexity of which they are susceptible, their long continuance and power to color and temper our whole experience, the way in which they break out from unsuspected depths, and in their painful forms of remorse or indignation will sometimes by a sudden upheaval rend the entire fabric of a man's previous life, or change the current of a nation's history — this incomparable vividness and electric force of the moral feelings proves that the conscience, whose servants

sentiment of self-approbation, saying: My conscience sanctions my course. It is therefore important to remark that one's feelings in view of his actions do not, even in the most remote way, furnish any proof of their true moral character. This would invert the psychological order that posits moral sentiment as dependent on moral judgment. In reality the feeling of approbation or disapprobation attends a false moral judgment as readily and fully as it does a true one, having no power to discern the difference. Hence these sentiments do not at all confirm the judgment; but, on the contrary, their own justification is wholly dependent on the validity of the antecedent judgment; and this depends ultimately on a clear discernment of the moral law by conscience. Accordingly we observe that even these sanctions, though original and innate, are liable, as are all other human sanctions, to distribute reward and punishment unduly, both in kind and degree.

In the class of subjective sanctions must be included the silent approval or censure of one's fellows. We are largely dependent for our free welfare on even the private opinions of each other. No man can reasonably be indifferent to the judgment that others form of his conduct, and to the moral sentiments with which it inspires them. Every right-minded

they are, is the sovereign factor of personality. These thunders and lightnings of the soul are wielded by that power which sits on the throne of our being."—Prof. Findlay, Headingly College, Leeds.

> "He, that has light within his own clear breast,
> May sit in the centre, and enjoy bright day;
> But he, that hides a dark soul and foul thoughts,
> Benighted walks under the mid-day sun,
> Himself is his own dungeon."
>
> — *Comus*, l. 381 *sq.*

Cf. Milton's *Prose Works*, i, 217. Also *Proverbs*, 4: 18, 19:—

> "The path of the righteous is as the light of dawn,
> That shineth more and more unto the perfect day;
> But the way of the wicked is as darkness,
> They know not at what they stumble."

man feels this keenly, whether the judgment be just or unjust. He is elated and encouraged by silent commendation; he is depressed and discouraged by condemnation. These also are potent sanctions ratifying the moral law, and upholding its authority.

§ 51. From the foregoing considerations it appears that the notion of violable law carries with it the notions of a gain of worth or dignity in its observance, and of a loss of worth or dignity in its violation; also that the one implies the notion of merit or desert, of reward due, the other of demerit, of penalty due. Furthermore, an observation of meritorious conduct, especially if despite adverse temptation, excites an impulse to bestow reward; of culpable conduct, a disposition to inflict punishment. These natural impulses have, no doubt, an instinctive origin and play, and so far are constitutional; but they have also a distinctively rational exercise, and so far are susceptible of justification.

In view of one's own conduct, an approving judgment of merit excites the instinctive impulse to reward well-doing, realized perhaps in some special self-indulgence; whereas a judgment of demerit incites an instinctive anticipation of punishment, which sometimes is self-inflicted. Criminals not infrequently surrender themselves voluntarily to public justice, that they themselves may have the satisfaction of penance for their misdeeds.[1] Suicide following remorse has perhaps often the character of self-inflicted punishment.

Recompense and retribution are reasonable. It is patent to common sense that the welfare of a community as a whole, and of its several members, is favored by the steady observ-

1 "I am sorry that such sorrow I procure;
And so deep sticks it in my penitent heart
That I crave death more willingly than mercy;
'Tis my deserving, and I do entreat it."
— *Measure for Measure*, Act v, sc. 1, l. 479 *sq.*

ance of the law which requires each to respect the rights of all others; and more especially is it evident that a wrong done, a trespass committed, is a breach of order affecting unfavorably, not merely the immediate sufferer, but mediately the welfare of all, even of those whose relation to him is remote. Therefore, when a breach is threatened, all agree that preventive restraints should be imposed; and when a breach is actually made, that the offender should be punished in such manner and measure as will deter him from repeating the offense, and deter all observers from like misdeed. If the community be one of which I am a member, I am disposed and indeed bound to take part directly or indirectly in inflicting the deterrent penalty. On the other hand, if some one, who, from moral weakness or from lack of moral culture, is specially liable to temptation, conform manfully in a certain action or in general conduct to the social order that ought to be, then there is a common judgment that he should be rewarded, and a prompting to bestow reward in such manner and measure as shall strengthen his good will, and induce observers in his class to practice like conduct. This seems to be a reasonable account and justification of the common disposition of men in their treatment of orderly and disorderly persons.

§ 52. The subjective sanctions in the minds of observers tend to become also objective in public opinion. The judgment and sentiment usually find expression in outspoken words of praise or blame, often in modes more forcible, as popular honors, or social ostracism.

Reprobation of a wrongdoer is, in general, directly proportioned to his intelligence and culture. For it is evident, from the admitted supremacy of the moral law, that a knowledge of one's obligations, implying the possibility of fulfilling them, diminishes in so far the ground of apologetic defense.

Conversely, ignorance of facts and circumstances which go to determine the moral quality of conduct, is allowed to be a palliation of offense, followed by a mitigation of punishment; yet is not allowed as complete excuse, for no human mind can be absolutely blind to its obligations.[1]

The sentiment and impulse prompting us to reward one who does well is, speaking generally, in inverse proportion to his intelligence and culture. A street gamin who finds and restores my lost purse should have some portion of its content bestowed on him, but I would not offer to reward a gentleman; should I commit the blunder, he would be justly indignant. We heartily approve the good deeds of cultured persons, but express rewards are rarely proposed to them. Academic honors are offered to youth as a stimulus before the fact, but in mature life honors are indefinite, spontaneous, and come after the fact. Titles of nobility are usually granted as rewards only for some special and signal service. Neither these, nor honorable distinctions of any kind, nor any emoluments, are granted for mere conformity to law. In the civil code, while to each law is attached a penalty for its violation, to no law in any enlightened State is attached a reward for its observance.[2]

This last observation gives occasion to remark that while, as already stated, penalty is a necessary sanction, essential in the very notion of violable law, reward is only a contingent sanction, it may or may not be applied, it is not essential. Moreover, in the progress of moral culture, not only does a promise of reward, but also the threat of punishment, gradually lose its influence. Many a man reaches the stage where these are, for himself, lost to view, and he fulfills his

[1] See *Luke*, 23 : 34 ; *Hebrews*, 5 : 2 ; 1 *Timothy*, 1 : 13 ; See also *infra*, § 61.

[2] The occasional rewards offered for the detection of felons, having a purpose quite different, are not exceptions.

obligations without regard to either. This is a high, yet not the highest, degree of culture.[1]

§ 53. Another class of sanctions, originating in the foregoing, may be discriminated as distinctly objective, being embodied in formal ordinance, and having reference to overt misdeeds. They are the enactments of an organized State. No longer recognized as individual judgments, they supersede the private opinion of the offender, the court and the executive, they have passed beyond the more or less sympathetic opinion of the public, and are objectified in a binding penal code.

Such, in general, is the character of all civil law. It cannot be too strongly or repeatedly emphasized that the whole science and practice of jurisprudence, in all its various branches, together with the vast and complex system of courts of judicature, having a prescribed and established form, manner and order for conducting suits and prosecutions, and having executive powers, has its ultimate basis and justification in the ethical principle of a personal right, and is merely an authoritative explication and application of the one moral law: Thou shalt not trespass.[2]

[1] "Those writers who disparage the morality of the New Testament as employing an inferior class of motives because it appeals to fear of future punishment and to hope of reward in heaven, seem strangely incapable of appreciating the real scope and spirit of Christian morality. The true glory of Christianity as taught in the New Testament is the almost measureless range of its motives, ascending from the hope and fear which can reach the lowest degradation to which man can descend, up to the purest spirit of disinterested love of which human beings are capable." — Robinson, *Principles and Practice of Morality*, p. 143, note. *Cf. infra*, § 91.

[2] Jurists quite commonly distinguish civil law from moral law, and legal obligation from moral obligation. This distinction has crept into common speech, conveying the erroneous impression that these are two coördinate kinds of law or obligation, having a different origin and a distinct essence, so as to be not only logically opposed, but sometimes, indeed often, in actual, practical opposition. Whereas in fact no obligation can possibly bind a

Very many kinds of enacted sanctions of law have been devised. There can be no doubt that in the early stages of organized society, the spirit of personal vengeance dominating, the intent and form of legal punishment was largely retaliatory, a paying back blow for blow.[1] This barbarous, strict *lex talionis* is no longer in vogue. It has been expunged from the penal code of civilized States, excepting in case of life for life, which is justified on grounds other than vengeance. For it is evident that, if requital in kind, to satisfy the thirst for revenge, be the object of punitive measures, then it is the purpose of the State, as far as it can reach, to double the suffering of its members; which is absurd. Whatever of vengeance is compatible with legal punishment, is reserved expressly for a tribunal higher than the State.[2]

Under a prior topic it was stated that rights may be reduced to three, a right to life, a right to liberty, and a right to property.[3] In refined codes the penalties correspond, consisting exclusively in deprivation of life, or of liberty by

human will that is not a moral obligation, and all jurisprudence or politics in general is strictly a subordinate branch of applied Ethics. Aristotle's *Politics* is a continuation of his *Ethics*. In concluding the latter treatise, he says: "Since all former writers have passed over without examination the subject of legislation, it would perhaps be better for us to examine it ourselves, and, in short, the whole subject of politics, in order that the philosophy of human nature, may, as far as in us lies, be completed." The transition is in the closing sentence: "Let us then make a commencement." — *Nic. Eth.* bk. x, ch. 9.

[1] See *Exodus*, 21 : 23–25 ; *Leviticus*, 24 : 17–21 ; *Deuteronomy*, 19 : 21 ; and *cf. Matthew*, 5 : 38, 39. Aristotle says : "Some people think that retaliation is absolutely just, as the Pythagoreans said ; for they defined justice simply as retaliation to another. But retaliation does not fit in with the idea either of distributive or of corrective justice ; and yet they would have that this is the meaning of the Rhadamanthian rule : 'If a man suffers what he has done, straightforward justice would take place ;' for in many points it is at variance." — *Nic. Eth.*, bk. v, ch. 5, 1. See also Butler, *On Resentment*, Sermon, viii.

[2] See *Deuteronomy*, 32 : 35 ; and *Romans*, 12 : 19. [3] See *supra*, § 26.

imprisonment, or of property by fines, damages or confiscation. Flogging has been generally abolished. Restitution, or else compensation, is enforced when practicable, but is not punishment; hence damages are added.[1] Punishment, then, is practically the taking away of that the right to which has been forfeited by trespass, by a transgression of the bounds set by personal relations to personal liberty. Moreover it was pointed out that the three kinds of rights may be reduced to one, the right to liberty in the gratification of normal desires. Hence it appears that as all offenses are unwarranted interferences in liberty, so all legitimate penalties are warranted interferences in liberty.[2]

§ 54. Pain is the correlate of restrained or constrained energy. Each of our powers tends spontaneously, that is, of its own proper nature, without strain, to put forth a definite quantity of free activity. If this amount be realized, there is pleasure; if less, the energy being repressed, or if more, the energy being overwrought, there is pain. Thus all pleasure arises from the free natural play of our faculties; all pain, from their restraint or constraint. The normal is pleasurable, the abnormal painful.[3]

[1] See *Exodus*, 22 : 1 *sq.*; and *cf. Luke*, 19 : 8.

[2] See *supra*, §§ 23, 27, 29. The ground on which the State is warranted in inflicting punishment, is examined *infra*, § 136 *sq.* The Constitution of the United States provides that no person shall "be deprived of life, liberty, or property, without due process of law." — *Amendments*, Article v. Also that "excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted."—*Idem*, Art. viii. "In San Francisco an ordinance was passed declaring that any male person confined in the county jail should have the hair of his head cut to within an inch of his scalp. To a Chinaman the loss of his queue was regarded not only as a disgrace, but as entailing suffering after death. This kind of punishment was declared unconstitutional by the Supreme Court." — Coker, *Government of the United States*, ch. xviii.

[3] See *Psychology*, § 228; also, Hamilton, *Metaphysics*, Lecture xlii *sq.* This doctrine of pleasure and pain originated with Aristotle; see especially *Nic. Eth.*, bk. x, ch. 4.

Naturally we have an inclination to pleasure, and an aversion to pain. A desire for pain, simply for its own sake, is a psychological impossibility. This constitutional aversion to pain impels one constantly away from abnormal extremes toward an intermediate normal condition, while the co-operating constitutional inclination to pleasure constantly draws one, like a pendulum, toward the same golden mean of moderation and harmonious order.

All trespass, being an interference in natural spontaneous liberty of action, gives pain. All legal penalty, for the same reason, is the infliction of pain; rarely in like manner, but always, if adequate, graduated to correspond in measure with the degree of trespass, and limited to the pain of repression. More widely, all sanctions of the moral law, innate or enacted, natural or artificial, are essentially the same, depending for their efficacy on the same element; all rewards are pleasures, all punishments pains. These are the natural attraction and repulsion in the spiritual sphere, tending to maintain a universal equilibrium, and to restore it when disturbed.[1]

It was a mooted question among the ancients whether pain is an evil, and to-day it is still a question. When we consider its influence in the preservation of our powers of body and mind, averting the ruinous effects of excess on the one hand, and of inaction on the other; when we observe the working of the whip of pain in the world of sentient beings, tending constantly to harmonize their mutual interests, and adjust their actual relations to the moral order of the universe in "a stream of tendency that makes for righteousness," it seems not merely unreasonable to account pain an evil, but that it should be reckoned essential to welfare,

[1] Pain, suffering, anguish; from Fr. *peine*, penalty, from Lat. *pœna*, punishment, penalty, pain; cognate with Gk. ποινή, a ransom, generally requital, also vengeance, penalty. Root uncertain, but perhaps, like Skt. *pú*, from Aryan root PU, to purify. Punish, to chasten, same origin. — SKEAT.

reckoned, along with the highest good, essential in the well ordering of a world of free activity.

This is the sanction by which the Divine Ruler of the Universe upholds his government against trespass. We instinctively revolt at the thought that the Deity is the author of sin, the source and sum of evil. But that he is the author of pain cannot be doubted, and is entirely accordant with the infinite benevolence that proposes and actively seeks to accomplish the highest welfare of humanity.

CHAPTER VI

RIGHT AND WRONG

§ 55. The substantive notions of a right and a wrong, used hitherto, need now to be supplemented by the corresponding qualifying notions of right and wrong.

A right is accorded in law; right is according to law. Right lines are straight lines; we draw them by means of a rule or ruler. So in the ethical sense, right actions are such as conform to rules of conduct, implying a ruler. More generally, they are those conforming to the moral law, any deviation from strict rectitude being wrong.[1]

[1] The use of topical terms — such as right and wrong, justice, duty, ought, service, charity or love, good — is avoided in this treatise, until the term occurs in place, is defined and discussed. The term welfare is an exception. For etymology of right, see § 19, note. Wrong = perverted; from Anglo-Saxon *wrang*, pt. t. of *wringan*, to wring, twist, bend aside; cognate with *wry*, and *awry*, this compounded of *on* and *wry* = on the twist. *Cf.* Lat. *tortus* from *torquere*. — SKEAT.

"Goodness in actions is like unto *straightness;* wherefore that which is done well we term *right*. For, as the *straight* way is most acceptable to him that travelleth, because by it he cometh soonest to his journey's end, so in action, that which doth lye the evenest between us and the end we desire, must needs be fittest for our use." — HOOKER, *Eccles. Pol.*, bk. i, § 8.

"What is rectitude or rightness as the characteristic of an action? According to Price and others, this term denotes a simple and primitive idea, and cannot be explained. It might as well be asked, what is *truth*, as the characteristic of a proposition? It is a capacity of our rational nature to see and acknowledge truth; but we cannot define what truth is. We call it the conformity of our thoughts with the reality of things. But it may be doubted how far this explanation makes the nature of truth more intelligible. In like manner, some explain rectitude by saying that it consists in a congruity between an action and the relations of the agent. It is the idea we form of an

The terms a right and right are, in last analysis, coextensive. Whatever one has a right to do is right for him to do. This seems obvious. Yet it is commonly supposed that exceptions often occur, and even moralists have taught that a man may have a right to do what is not right. A planter, it is said, has a right to destroy his crop, but it would not be right.[1] This paradox cannot be allowed. It arises perhaps from the false notion that one has a moral right to do whatever is not forbidden by civil law, which is mere legality, not morality. The true limitations of rights are not found in civil law, nor in enactments of any sort, but in the nature and relations of men, which the most elaborate enactments fall far short of defining completely. A producer destroying a product of any value, an heir wasting his inheritance, an idler not exercising his ability, is wronging or trespassing on rights of others naturally vested in these things. In the proper ethical sense a right to do a wrong, or to do wrong, is absurd.

Conversely, whatever is right for one to do he has a right to do; any interference by any other is a trespass. For, if

action, when it is, in every way, conformable to the relations of the agent and the circumstances in which he is placed. On contemplating such an action, we approve of it, and feel that if we were placed in such circumstances, and in such relations, we should be under an obligation to perform it. Now the circumstances and relations in which man is placed arise from his nature, and from the nature of things in general; and hence it has been said, that rectitude is founded in the nature and fitness of things; that is, an action is right when it is fit or suitable to all the relations and circumstances of the agent." — Fleming, *Vocabulary*, *ad verb.*

[1] "The adjective *right* has a much wider signification than the substantive *right*. Everything is *right* which is conformable to the supreme rule of human action; but that only is *a right* which, being conformable to the supreme rule, is realized in society and vested in a particular person. Hence the two words may often be properly opposed. We may say that a poor man has no *right* to relief, but it is *right* he should have it. A rich man has *a right* to destroy the harvest of his fields, but to do so would not be right." — Whewell, *Elements of Morality*, bk. i, § 84. Cf. *supra*, § 48.

it be not right, it is wrong, these being contradictories; and in doing wrong one always inflicts a wrong, greater or less, near or remote, on some one affected by his act which, if not punishable, is at least censurable. Hence the terms are co-extensive.

A moral right, or simply a right should be distinguished from a legal or jural right.[1] The one is generic, the other specific. The one is accorded in universal moral law, the other is accorded in imperfect and exceptional civil law. A right properly implies both exemption from legitimate interference in its exercise and an obligation to exercise it; whereas a jural right implies immunity merely, not obligation. Hence the unqualified term leads to confusion. Sometimes indeed there is formal opposition between moral and legal rights, for occasionally unrighteous laws are enacted, technically conferring rights that are immoral, authorizing wrongs. A moral right to act is an obligation to act, which is synonymous with right action.

§ 56. Right or wrong is the moral quality of a voluntary personal action. As propositions are always either true or false, so actions are always either right or wrong. A true proposition accords with axiomatic logical principle, and a right action accords with axiomatic moral principle. As one of two contradictory propositions must be false or logically

[1] "A party has a right when another or others are bound or obliged by the law to do or to forbear towards or in regard of him." — AUSTIN, *Lectures on Jurisprudence*, § 576. A legal or jural right "signifies that which jurists denominate *a faculty*, which resides in a determinate party or parties by virtue of a given law, and avails against a party or parties other than the party or parties in whom it resides. . . . It is manifest that *right* as signifying *faculty*, and *right* as signifying *justice*, are widely different though not unconnected terms. But nevertheless the terms are confounded by many of the writers who attempt a definition of *right*, and their attempts to determine the meaning of that very perplexing expression are, therefore, mere jargon." — *Idem*, § 264, note. *Cf.* Mill, *Logic*, bk. v, ch. 7, § 1 (p. 569). Also *cf. supra*, § 36, note.

absurd, so one of two incompatible actions must be wrong or morally absurd. An action that is wrong is a moral self-contradiction, inconsistent with what may be known to be right or in accord with axiomatic law, and thus is a self-condemned absurdity.[1]

It has already been stated that on the empirical occasion of a voluntary personal action, we have an intuitive discernment by conscience of the existence in it of moral quality, we discern that it is either right or wrong. But whether the observed action, as striking a blow, be right or be wrong, is not at all intuitive, not at all discerned immediately by the pure practical reason or conscience. Which one of these two contrary qualities it has, conscience does not know; it knows only that it must have one or the other.[2]

[1] In the moral relation of one man to another, we distinguish the one as having a right and hence susceptible of a wrong, the other as doing right or wrong. Let p represent a patient having a certain right, and a an agent to whom this right relates. If a respects this right, by either acting or not acting as the case may require, then he does right, and the right of p is adjusted; but if a defaults, then he does wrong, and p suffers a wrong, a trespass. Thus a wrong is conditioned on and coexists with a right; whereas the qualities right and wrong, being contradictories in form and contraries in fact, cannot co-exist in one and the same action. Right and wrong are marks of kinds of action; while merit in the one kind, and demerit in the other, are marks of degree. See *Elements of Deductive Logic*, § 23, and § 125.

In addition let it be noted that whatever accords with universal order is right; and whatever disaccords with universal order is wrong. A special order when at variance with universal order is wrong, as in systematic vice or tyrannical rule; and a special disorder when resolving into universal order is right, as in reformation or revolution. In general, however, disorder is wrong; or whatever is irregular is wrong. Moreover, whatever is right is reasonable, rational; and whatever is wrong is unreasonable, irrational. A wrong is a blunder; sin is folly; what is wicked is stupid; crime is craze; intelligent prudence does right. Said a certain one: "I have often been called a scoundrel, but no one ever yet called me a fool." If he was a scoundrel, then he was a rank fool. Furthermore, nature is a system of universal order (§ 15); hence it is natural to do right, unnatural to do wrong, and sin is the most unnatural thing in the world.

[2] "The primary element is a simple irreducible perception of the distinc-

For evidently the notions of right and wrong imply accord and discord with some general principle requiring all voluntary activity or personal conduct to conform uniformly to its indications. Hence every case must be subsumed under that principle in order to ascertain which one of the two qualities is predicable of it. This is a logical process. It is not a discernment of pure reason, but is a reasoning; not conscience, but inference.[1]

The logical process concluding the moral quality in a given case, is very liable to error. The specific action in which the moral quality inheres is, as we shall immediately show, subjective, internal in the agent. Now, when one judges his own act, though it is open to his direct observation by introspective self-examination, still, from a lack of clear discernment of the primary principle, or from a lack of logical

tion between right and wrong. . . . This distinction appears among the necessary ideas of the human mind. It is a phenomenon in the psychology of the human race. It is developed, in the presence of the facts and relations of life, as something provided for in the normal and necessary action of the rational self-conscious *ego*. It must be viewed as an intuition of the reason. It cannot be otherwise accounted for. In its nature it is not a feeling, though it gives rise to feeling. It is not a volition, for it comes irrespective of choice, and asserts its own rights before the will. It is not a mere experience, though it arises on occasion of experience. The idea stands for something beyond experience, experience being limited to the profitable, the enjoyable or the painful. We experience the useful and the agreeable, but the right, the ethical idea, must be perceived or rationally seen, as a super-sensible reality in the ideal realm of the demands of duty. It is not a perception of the relations themselves, but of a distinction as to something due in human relations and life." — VALENTINE, *Theoretical Ethics*, ch. iv, 4.

Dean Stanley says that Livingstone "never tired of repeating that he found among the native races of Africa that same feeling of right and wrong which he found in his own conscience; and that it needed only to be developed and enlightened to make a perfect character."

Aristotle, in *Rhetoric*, bk. i, ch. 13, says: "There does exist naturally a universal sense of right and wrong, which in a certain degree all intuitively apprehend."

[1] See *supra*, §§ 2, 3, 43.

skill in making the deduction, or from carelessness, he often errs. Much more is one liable to err when judging the act of another person. For the subjective movement of another is beyond one's observation, and can be known only by his confessions, his professions, or by his outward perceptible movements, these together with circumstances being signs from which the internal act is inferred. This additional inference greatly increases the uncertainty of the conclusion, and warns against hasty judgment.

§ 57. What is the specific action of which the moral quality is a property? In other words, what is the distinct and informing fact wherein conscience discerns obligatory moral quality, and whereon we pass discriminating moral judgment?

It is to be premised that no fact of causation has moral quality. Whatever is caused is necessitated by its cause to be just what it is. There is no alternative. Moreover, by the axiom of uniformity, that like causes have like effects, there is no variation in effects, if there be none in their causes. This is the realm of necessity. It is opposed to the realm of freedom, wherein alone moral quality finds place; for freedom must be allowed as *conditio sine qua non* of moral action. Only beings having free will are morally responsible, and among these only such persons as are conscious of moral obligation.[1]

Outward physical or muscular action, therefore, has in itself no moral quality, not even that outward action commonly called voluntary. For the movement of the muscles is due to physical causes originating in the brain, and this brain action causing muscular motion is itself caused by antecedent mental action. Hence only to mental action can moral quality be immediately attributed.

[1] See *Elements of Inductive Logic*, §§ 18, 19. Also see *supra*, § 10, and § 18, note.

The exercise of conscience discerning moral quality, for like reason, has in itself no moral quality; it is neither right nor wrong. Knowledge of right and wrong, and of the distinction between them, arises on the presentation of a personal action, which empirical occasion is a condition precedent. Moreover, conscience can never have the quality imported into it; for its exercise is originally and essentially involuntary, the discernment intuitively necessary. The same is true of all pure intuitions.

All empirical intuitions, as the sense-perceptions, are likewise destitute in themselves of moral quality, since they are the involuntary products of our constitution in the presence of causative objects.

The exercise of the logical faculty, even in case of moral judgment, has no moral quality in itself, for it is an effect of voluntary attention.

The like consideration sets aside, not only all presentations and the representations of thought, but also the representations of mediate perception, memory and imagination, together with the feelings and desires that attend them. All these are strictly effects, and therefore destitute in themselves of moral quality.

§ 58. Consequently, in our search for the activity which has moral quality in itself, we are shut up to the volitions. Volition has three constitutive elements, choice, intention, effort.[1]

This last, the effort, which is voluntary attention, is caused by the motive, the desire that prevails, without alternative. Hence the effort is a necessitated act, and so without moral quality, in itself neither right nor wrong.

The first element, the choice, viewed simply as an act apart from its specific character, is also causally necessitated

[1] See *supra*, §§ 7–9.

to take place or occur by the mere presentation of possible alternatives; I must choose between them. Hence the simple act of choosing is in itself destitute of moral quality.

But the choice of one alternative rather than the other, the taking this rather than that, is a fact uncaused, not necessitated, free; for herein is the specific characteristic and the very essence of choice. In its resolution choice becomes intention, the intention to do or forbear a certain action. This central fact, the only fact in human nature or in nature at large that is not caused to be what it is, this resolution, this intention, purpose, design, this alone is capable of inherent moral quality.

An intention, though not causally determined, is rationally determined, is in accord with some one or more reasons.[1] Now the moral law furnishes a reason naturally and therefore rightly dominating all others, and since it is the intention only that intelligently, impellingly, freely, preferably, conforms to or disregards moral law, it follows that the intention properly has moral quality, is either right or wrong.

Moreover, since the all-dominating moral law, the ultimate and absolute criterion of conduct, is addressed directly and exclusively to choice becoming intention, it follows that the intention is never morally indifferent, is always either right or wrong; right, when it intelligently, reverently and willingly conforms to the law; wrong, when it knowingly violates or merely disregards the law.

From these considerations it is manifest that the moral law applies, not directly to the outward, expressed, objective activity, but primarily and immediately to the inward, antecedent, subjective intention.[2] Hence, if we regard a trespass

[1] See *supra*, § 10, note.

[2] "Acts may be distinguished into *external* and *internal*. By external, are meant corporeal acts, acts of the body; by internal, mental acts, acts of the mind. Thus, to strike is an external or exterior or 'overt' act; to in-

as an action passing over from one person onto another, a realization of an intention inflicting injury, the formula of the moral law should be: Thou shalt not intend to do aught that would involve a trespass. It will be better, however, to regard a trespass as the total activity, including both the subjective antecedents and the objective consequents, the moral quality of this total residing in the intention.

§ 59. That moral quality is thus a constant property of intention requires some further consideration, especially of the distinction between the intention to do an act and the ulterior intention with which it is done, or the purpose.

There is a large class of offenses varying in degree from extreme criminality to comparatively slight culpability, such as murder, stealing, lying, betting, whose very essence is trespass. Hence the intentional doing of an action of this class is wrong; or, more closely, the intention to do it is wrong, wrong in itself, being a radical violation of the law of trespass. Complete, successful action is not requisite to constitute guilt. An attempt, an overt act, though it fail, is evidence of guilty intention, and therefore condemnable; as in the murderous contrivance of Guy Fawkes, and in the villainous slander of Don John.[1] A mere intention to do

tend to strike, an internal or interior one." — BENTHAM, *Principles of Morals and Legislation*, ch. vii, § 11. It is the common habit of thought and speech to attribute moral quality directly to the external act, and this habit is confirmed by the practice of the civil courts requiring at least an overt act for indictment. Yet the courts seek evidence of intention as the ultimate determinant. Murder implies criminal intent; accidental homicide is distinguished from murder merely by the absence of such intent. Says the Duke, speaking of Angelo:

> "His act did not o'ertake his bad intent,
> And must be buried but as an intent
> That perished by the way. Thoughts are no subjects,
> Intents but merely thoughts."
>
> — *Measure for Measure*, Act v, sc. 1, l. 445, *sq.*

[1] See *Much Ado About Nothing*. In his *Institutes of the Criminal Law*, p. 85, Professor Rosshirt, of Heidelberg, defines an attempt thus: "Eine

the deed, an intention that, perhaps for want of opportunity, never passes into overt action, is already a culpable violation of the law. Now what is essentially wrong can never become right, for this would be a contradiction. Hence any of this class of intents can never be justified by an ulterior end, however good, wise, benevolent this may be. No end can sanctify such means. We may never do evil that good may come.[1]

Conversely, what is essentially right can never become wrong. The intention to do an act that is right in itself alone considered cannot be vitiated by an ulterior purpose, however vicious this may be. Shylock did a righteous act in the loan of the ducats; it was his ulterior purpose that was wicked.

There is another class of intents that, in themselves alone considered, have no moral quality; as an intent to give money, to take a walk, to write a letter, and very many others. Such are usually spoken of as morally indifferent. But an intent of this sort, being properly of a means to an end, has the moral quality of the intended end imputed to it; in other words, the proposed end sanctifies or vilifies the pro-

Handlung, welche die Hervorbringung eines Verbrechens zum zwecke hat, ohne den bezweckten verbrecherischen Thatbestand wirklich zu machen, ist ein Versuch." In civil law the intention (*consilium*, *cogitatio*) is recognized as crime, provided it is evidenced by an attempt or overt act. Where a criminal intention is evidenced by an overt act, the party is punished in respect of the criminal intention, commonly with less severity than if the deed were fully accomplished. Even confession without overt act is insufficient to legal condemnation, for it may be due to insanity, or be invented. Feuerbach says: "The reference of the fact as effect to the determination of the will as cause, settles or fixes the legal character of the latter. In consequence of that reference, or by reason of the imputation of the fact, the determination of the will is held or adjudged to be guilt; which guilt is the ground of the punishment applied to the party." — *Institutes of Penal Law in Germany*, p. 79.

[1] "It is not permitted to an honest man to corrupt himself for the sake of others." — ROUSSEAU. See *Romans*, 3: 7, 8.

posed means, this becoming right or wrong according to the ultimate purpose, or the intention with which it is done. If I propose to give money, which intent in itself has no moral quality, with the further intent to relieve distress, the intent to give becomes right; if to buy votes, it becomes wrong. So the intended means takes its moral color from the intended end; for the intention in such case is to be judged in its totality, not in its dependent parts; it is dyed throughout with a uniform hue.[1]

§ 60. The principle that moral quality is imputed to acts which in themselves have none, is of wider application.

Let us recall the fundamental fact in human nature that a free will is the primary condition of moral activity, is the central essence of personality, and is most nearly identical with the ego, is I myself. To it alone of my powers, that is to me myself, the mandate of the moral law is addressed, since by it alone am I able to direct my powers. For the functional property of will is to control, according to its freely formed intention, by means of attention, directly or indirectly, all other elements of personality, as cognitions, feelings, desires and muscular motions, awaking or stimu-

[1] While one is bound to use a wise economy in the choice of a means, he is not otherwise particularly concerned about its right or wrong, unless so qualified in itself. When assured of a right end, he pursues it by any available means not wrong in itself. For instance, I am obliged to write a letter; I procure pens, ink and paper, seat myself at my desk, handle my pen, etc., without any thought of the moral quality of these subsidiary acts. Again, I owe a large money debt; in order to pay, I am diligent in business, prudent in expenditure, active and frugal, without thought of the moral quality of a multitude of details, except of their honesty, involved in the intermediate process. In general, it is needless and would be impracticable to examine and judge each of our minor actions separately. Having given attention to the moral quality of the end in view, we need to judge only that no adopted means is wrong in itself. Assured of that, we confidently pursue a righteous end.

On Moral Intention, see Janet, *Theory of Morals*, bk. iii, chs. 1, 2.

lating or repressing their activity; and its obligation is to exert this control according to the supreme moral law.

The mastery of the representative cognitions, of mediate perception, memory, imagination and thought, is immediately accomplished by directing attention to this or that object as one may choose. They thus have moral quality imported into them, or imputed or attributed to them, according to the intention. For the effort of attention is a passing from the sphere of freedom into the sphere of causation or necessity, and what shall take place in this sphere, being determined by the freely formed intention, is marked by the moral quality of the determinant, becomes essentially right or wrong by imputation. I am morally obligated, for instance, to exert and regulate my logical faculty in search for truth, its proper object, especially for such truth as bears upon conduct, lest an error lead to trespass. The moral judgment, by inference from the moral principle, thus discovers reasons determining intentional conduct, and so is obligated, through the will, to a most patient and vigorous exercise, which is also, because of this obligation, a righteous exercise. Neglect of the obligation, or failure to fulfill it, renders us responsible for our avoidable errors and their consequences.

Inasmuch as feeling is correlated with knowing, our emotions and sentiments are subject to indirect yet efficient control by means of the direct control of the cognitions with which they coördinately coöperate.[1] For, since we can at will directly transfer attention from object to object, we are able thus indirectly to induce or repress the feelings that attend contemplation. These, therefore, have moral quality imputed to them, those that are normal or orderly being right, those that are abnormal or disorderly either in kind or in degree being wrong. They can and should be controlled,

[1] See *Elements of Psychology*, §§ 221, 229.

regulated, well-ordered. Because of its vast importance, let belief be instanced. It is the feeling of conviction, the assurance of physical or moral certainty that attends or is correlative to the recognition of truth.[1] Its opposites are the feelings of doubt and disbelief. Now obviously, so far as we are under obligation to search out attainable truth, thus becoming responsible for our ignorance of what we could and should know, just so far are we bound to believe and are responsible for doubt or disbelief of attainable truth; these, indeed, being merely correlative statements. Hence we can be and are reasonably commanded to believe authentic or accessible truth; the belief of it is right, the doubt or disbelief is wrong.[2]

Likewise desires have imputed moral quality. Desire is conditioned on real or imaginary objects of cognition; con-

[1] See *Elements of Psychology*, § 227.

[2] Christianity conditions salvation on belief; hence the supreme importance of this matter. Mr. Lecky, in his *History of Rationalism in Europe*, presumes *passim* that no one can be held responsible for his belief. *Cf.* his *History of European Morals*, vol. i, p. 412 *sq.* Mr. Bailey, in his *Essays on the Formation of Opinions*, argues to that effect, saying: "Those states of the understanding [?] which we term belief, doubt, and disbelief, inasmuch as they are not voluntary, nor the result of any exertion of the will [?], imply neither merit nor demerit in him who is the object [*sic*] of them. . . . In relation to the same subject one may believe, and another doubt, and a third disbelieve, and all with equal innocence." The *Westminster Review* indorses Mr. Bailey in this; also Sir James Mackintosh, in his *Progress of Ethical Philosophy*, he insisting that in no case are we responsible for our opinions or beliefs, because, as he says, they are wholly independent of our wills. This is erroneous psychology. See a controverting article, by Albert T. Bledsoe, in the *Southern Review* for July, 1871. Austin says: "If I love darkness and hate the light, I refuse to examine the proofs which might render the truth resistless, and dwell with complacency upon every shadow of proof which tends to confirm my prepossession. For this reason, nonbelief may be blameable; when, for example, it is the result of insufficient examination, refusal to examine, partiality or antipathy indirectly removable, etc."—*Lectures on Jurisprudence*, § 661.

A saying attributed to Lord Brougham, which infidelity has adopted, is: "It makes no difference what a man believes, if only he is sincere." This

sequently it comes and goes with their contemplation. Since this is under direct control, the desire can be effectively though indirectly regulated, and is right or wrong according to the volition.[1] But because desire directly solicits choice and becomes the motive in effectuating the intention, it receives moral quality in a marked degree. For example, covetousness, which may be taken as the type of abnormal desire, is forbidden in the law, Thou shalt not covet; the only one of the Decalogue formally subjective. Thereby I am commanded to suppress covetousness whenever it instinctively or spontaneously appears, much more am I forbidden to incite and cherish it. I am required to choose, intend and enforce its cessation; for it is abnormal and evil, tending to objective disorder and trespass. Therefore I do wrong to allow it, and it becomes wrong by the allowance. Normal desires, which within their limits not only are right in themselves, but constitute the very basis of all human rights,[2] become abnormal and evil by degree, either when weakened by inattention to their objects, or when immoderate and inordinate by excess. They then become wrong, because I do wrong in neglecting or failing to regulate them.

External activities, the movements of the voluntary muscles, and their proximate consequences, are, for like reason, right or wrong by imputation. It is only by an observation of his overt acts that one's mental states, thus expressed, can be judged by other persons. Hence we correctly speak of good deeds, bad habits, and the reverse, and approve or censure them; but always with reference, though tacit, to the subjective intention.

is a denial of objective truth, and of creeds. A similar denial is made of objective duty. But no amount of sincerity can release one from the responsibility and dreadful consequences of believing a lie.

[1] See *Elements of Psychology*, §§ 255, 257.

[2] See *supra*, § 25.

It is a weighty and impressive truth that, not only our outward conduct, but our innermost thoughts, imaginings, feelings and desires, all at all times, are made by their intentions right or wrong; that we are responsible, not only for every idle word, but for every idle thought or wish; and that in the perfected administration of moral government, all these shall be brought into judgment. Who hath ears to hear, let him hear.

§ 61. The many deeds that are essentially trespass, wrong in themselves, are not known to be so intuitively, but only by inference from the moral principle as an ultimate major premise. Hence we are liable to error in judging them, especially in the less obvious cases. The error arises from an obscure or confused apprehension of the ultimate principle or law, or from an incomplete or inaccurate knowledge of the particular case subsumed, or from bad logic in making the deduction. Hence it sometimes happens that one sincerely desiring to do right, having a motive and an ulterior purpose that are right, honestly judging and believing that what he is doing is right, may nevertheless be doing what is wrong in itself, essentially, unalterably wrong.

Also it is true that every man in all cases is morally bound to do what in his best judgment seems to him to be right. In popular phraseology, he must obey his conscience; is doing right, if he acts conscientiously; is wrong, if he violates his conscience. Obviously it is implied that one should carefully exercise his best ability in judging a case, bringing to bear upon it all the light attainable, unobscured by predilection, repugnance or passion; then, having done this, he must conform his conduct to the result of his judgment. If circumstances require a prompt decision, without time for close consideration, then a habit of moral thought and a familiarity with moral principles greatly enhance the proba-

bility of a correct decision; but in any case it is morally necessary that he intend and do what his moral judgment approves; otherwise he becomes a willful offender.

Now, putting this and that together, we have the moral paradox, that one in doing what is wrong in itself may be doing right. This is an inevitable consequence of the imperfections of moral judgment. Othello was bound by high principles of honor, as he understood them and the case, to commit uxoricide. The infanticide by the Hindu mother is an act of piety. Saul as persecutor verily thought he was doing God service. Conversely, one in doing what is right in itself may be doing wrong. A judge in granting a righteous suit is doing what is right; but if he do it merely to escape annoyance or censure, or to entangle the plaintiff in evil consequences, he is in the same act doing wrong.[1]

This moral paradox involves imperfect persons in dreadful responsibilities. We are answerable not only for wrong believed to be wrong, but for wrong believed to be right, and or right believed to be wrong. 'Tis a strait and narrow way. A legal maxim holds that *Ignorantia juris non excusat;* but, in equity, ignorance or sincerity in a moral blunder palliates, especially in a penitent, though it does not excuse, an offense, and so becomes a ground for mercy by a mitigation or a transfer of punishment.[2] Naturally we do not shudder at the crime of Othello, as we do at that of Macbeth. Saul obtained forgiveness because of ignorance. Divine mercy dictated the prayer: Father forgive them; for they know not what they do.

[1] *E.g.* Shylock. *Cf. Luke*, 18: 1–6, where Avenge, Ἐκδίκησόν, means Do me justice of (*margin*, R. V.), or Deliver me from — the justice of the case being presupposed. This judge was unjust, unrighteous, κριτὴς τῆς ἀδικίας, "because his ἐκδίκησις came of *self-regard*, and not from a sense of duty."— Alford, *Com. ad. loc.*

[2] See *Leviticus*, ch. 4; *Numbers*, 15: 24–29; *Luke*, 12: 48, and 23: 34; *Acts*, 17: 30; 1 *Timothy*, 1: 13.

CHAPTER VII

JUSTICE

§ 62. Thus far the moral law has been considered chiefly as prohibiting aggressive and injurious acts or lines of action. The formula, Thou shalt not trespass, primarily forbids whatever unwarrantably interferes in another's liberty. Its correcting effect is to put a strong positive check upon the hindering activities of related persons, to the end that every one may fully gratify his normal desires; it restrains within bounds the course of each, so that all others may freely exercise their rightful license. This prohibitory sense is so obvious and emphatic that many who are under the law conceive that by keeping within the prescribed bounds the demands of the law are satisfied, that purity and innocence, which are negatives, fulfill its behest, that to forbear injurious aggression is the sum of obligation.

But this is a very inadequate conception of the content of the law, a law enjoining an order of facts that ought to be; enjoining in the negative sense of forbidding one class, and enjoining in the positive sense of requiring another class. It lays upon us the injunction both to refrain and to perform. It says, *Thou shalt not* transgress stated bounds; and by necessary implication, it also says *Thou shalt* do many things within those bounds. This positive requisition is not less obligatory than the prohibition, and it is merely because of the imperfection of language, unfitted to express both the positive and negative aspects of one and the same thought or mandate in a single simple formula, that the one is apparently more emphatic than the other.

The necessary implication of active obligation is readily explicated. Trespass is effected either by commission or by omission. That the one is direct, the other indirect, is not a difference in essence, and either may be a wrong as heinous and as fatal as the other.[1] In the various relations of men, every one has rightful claims upon the activities of others, and they who omit to fulfill these claims commit a wrong, a trespass. For, my willful omission of an act to which some other has a right, is a violation of his right, is to leave him under a restraint of his rightful liberty, which restraint I am bound to remove. To be merely negligent, heedless, thoughtless, careless of another's right to my action, is to embarrass him more or less, is to interfere indirectly in his liberty, and thus is to trespass on him. Therefore, to him that knoweth to do good and doeth it not, to him it is sin.

The point here brought squarely to the front has been to some extent anticipated in several places.[2] In what follows we shall give it full recognition, and allow its weight to establish the equilibrium between forbearing and doing, which equilibrium a correct conception requires. Thus it will appear that the law of trespass rightly interpreted applies exhaustively to the relations of man to man, and is comprehensive of every phase of obligation.

§ 63. The term justice is the abstract from the concrete form just.[3] To be just is to concede to everyone his rights; and justice is the concession of rights. This is the most

[1] "Dans une action criminelle, entre celui qui fait et celui qui laisse faire, celui qui laisse faire est le pire, étant le lâche."—Victor Hugo, *Quatrevingt Treize*, p. 451.

[2] See *supra*, especially § 41, and § 48.

[3] Just and justice are from the Latin *jus*, a right, founded on nature, custom, or enacted law, *lex*. The original sense of *δίκη*, a right, was custom, usage, manner (*cf.* *ἔθος*, *supra*, § 19, note); hence *δίκαιος*, just. According to Plato, justice, *δικαιοσύνη*, is the universal virtue, and consists in the fulfillment by each part of its peculiar function. Even piety, *ὁσιότης*, is justice in

general sense. When a right consists in a specific claim on the action or inaction of some one, the concession of a just man implies his action or inaction in satisfaction of the claim. An important distinction is sometimes laid down between *justitia interna*, disposition to do right, and *justitia externa*, rectitude of conduct.[1] The opposite of justice is injustice, which is to refuse or to neglect the concession, and of course its actualization. Whoever is treated unjustly, be the injury great or small, is thereby restrained, more or less, in his rightful liberty to gratify some normal desire, which restraint is essentially a trespass.

Indeed it is quite obvious that injustice is trespass, and trespass injustice; and that the law forbidding trespass is a law forbidding injustice. For, according to the moral principle, every one has a right, if not trespassing, to gratify his normal desires; but it is impossible to have this gratification in a multitude of cases except by concession of one's fellows; hence, if they withhold the concession, they disappoint his desires, and nullify his claims. For example, I have a right to the fulfillment of all formal contracts and of all informal promises made to me, whether for money or ser-

reference to the gods. See *Republic*, bks. i and ii. According to Aristotle, justice, in its general sense, is the practice of all virtue towards others, *τῆς ὅλης ἀρετῆς χρῆσις πρὸς ἄλλον*. It is the most perfect virtue, because it is the perfect exercise of all virtue. — *Nic. Eth.*, bk. v, chs. 1, 2. Cicero says justice is, negatively, *neminem lædere*, positively, *suum cuique reddere*, or *animi affectio suum cuique tribuens*. — *De Finibus*, v, 23, 65. Grotius, the jurist, makes the notion of justice the fundamental principle of his great work, *De Satisfactione*.

[1] This distinction is neatly marked by Horace in his sketch of the man who is only outwardly just. He is one —

> "Qui consulta patrum, qui leges juraque servat,
> Quo multæ magnæque secantur judice lites,
> Quo res sponsore, et quo causæ teste tenentur.
> Sed videt hunc omnis domus et vicinia tota
> Introrsus turpem, speciosum pelle decora."
>
> — *Epistles*, i, 16, 41 *sq.*

vice, a right to the payment of all that is my due; if the debtor refuse, or if any one hinder his payment, it is a trespass, an injustice. Also I have a right to acquire knowledge, property, social position; and if any one hinder my effort, or neglect due help, he does me a wrong. Again, I have a rightful claim on my fellows for a fair judgment on my character and conduct; and to deny me the measure of honorable esteem to which I am entitled is a gross injury; to slander me, one still more gross. Moreover, I am naturally a social being; and if, without warrant, my association with companions is prevented or disconcerted, my right is infringed, I suffer a wrong, a trespass, an injustice. Thus injustice, or its cognate, injury, is as truly committed, indirectly, by withholding or perverting a right, as by directly inflicting damage. Also it is evident that to prohibit injustice is to command justice. The sole difference is in the negative and positive expression of the same thing. The injunction, Thou shalt not trespass, is identical with the injunction, Be thou just.

§ 64. Justice taken specifically, with reference to matters involving gain or loss, is subdivided into corrective and distributive justice.

Corrective justice is fairness in exchange, or honesty in a general sense. It is either voluntary, as in trade, in the market, in commerce, in fulfilling contracts and promises, in payment of debts, in remuneration for service rendered; or it is involuntary and rectoral, enforced by decrees of the courts in civil cases, as in the settlement of suits, the award of damages, the reparation of illegal trespass.

Distributive justice is distinguished from corrective by not including the notion of exchange. It is the proper partition of possessions and honors among members of society. It corresponds to the notion of approbation or censure bestowed in proportion to individual merit or demerit, to the award of

prizes, and of penalties in criminal cases. When a man's course in life entitles him to the esteem of his fellows, and to such outward honors as express their valuation of his worth, distributive justice requires that these be accorded. From the recipient of a benefaction it requires gratitude. It is violated by excessive adulation or by slander; even by a secret misjudging of another's worth. In case of overt infraction of law it is satisfied rather than rectified by penalty.[1]

§ 65. Justice, in the narrow sense of legal justice, is administered by courts of law. The civil law, or else the common law, and the statute law, which these courts apply to cases, together with the forms by which their proceedings are regulated and their decrees enforced, all have their immediate ground in the authority of the State, their ultimate ground in human rights, and all are specific reductions of the one law forbidding trespass, commanding justice. Jurisprudence, in general, is the science of rights as formulated and sanctioned by governing powers. It is the science of enacted law, investigating the principles common to all systems of law. Morality enjoins obedience to the universal, natural law, *jus naturale*, in all possible relations of men; jurisprudence enjoins and exacts obedience to that law only in so far as it is recognized and authorized in the enactments of the State. Thus Jurisprudence is a branch of Ethics.[2]

It is clear, then, that law-makers do not originate obligations; their office is merely to interpret and formulate the

[1] The distinction is from Aristotle, *Nic. Eth.*, bk. v, chs. 3, 4. He also distinguishes commutative justice, or retaliation, ch. 5; *cf. supra*, § 53. Moreover he distinguishes political and economical justice, ch. 6; and subdivides the former into natural and legal, ch. 7.

[2] "The design and object of laws is to ascertain what is just, honorable, and expedient; and when that is discovered, it is proclaimed as a general ordinance, equal and impartial to all. This is the origin of law, which, for various reasons, all are under obligation to obey, but especially because all

obligations already existing, and to enact special sanctions. All laws, organic, municipal, military, international, all ordinances, canons, edicts, decrees, treaties and arbitrations, have the same ultimate basis, the moral law; they must be just to be obligatory. *Jussum quia justum est.* If the law-making power, or, more generally, the constituted authority, depart from its function, and promulgate laws or ordinances at variance with the one moral law, or for other ends than those of public and private justice, or in disregard of the original and inalienable rights of the subject, then the enforcement of such laws and ordinances is unjust rule, is tyranny.[1]

One qualification is needful. If an unrighteous law be not intolerably oppressive, and does not induce or sanction an immorality in the subject, then he is morally bound to obey it; for, since it emanates from constituted authority, a refusal to obey would be a trespass on the State through its accredited agents. The remedy is a repeal of the law. But if a law be so unjust as to be intolerable, then there is appeal to the higher law, *jus naturale*, by one as by Hampden, or by many as by the English colonists in America. This is rebellion, resulting perhaps in revolution.[2]

The laws enacted by any human government, however they may be elaborated and refined in the interest of thorough justice, are nevertheless unavoidably inadequate and imper-

law is the invention and gift of Heaven, the sentiment of wise men, the correction of every offense, and the general compact of the state; to live in conformity with which is the duty of every individual in society."—Demosthenes, *Oration* i, *contra Aristogiton.*

"The law of nature, being coeval with mankind, and dictated by God himself, is of course superior in obligation to any other. It is binding over all the globe, in all countries, and at all times. No human laws are of any validity, if contrary to this; and such of them as are valid derive all their force, and all their authority, mediately or immediately, from this original."—Blackstone, *Commentaries*, *Int.* § 2, p. 41.

[1] See *supra*, § 37, fourth paragraph.

[2] Aristotle, in his *Rhetoric*, bk. i, ch. 13, refers to Antigone's defense of

fect. They can effectually prohibit only the grosser forms of wrong doing, and secure the practice of mutual justice only in certain definite transactions, the vast majority of existing obligations, many of the weightiest, being beyond the reach of the courts. Moreover, in such cases as come under the laws, and of which the courts of law take cognizance, it is very often difficult and sometimes impracticable to determine and administer strict justice. Yet, notwithstanding these inherent defects, the laws and the courts of law are the tense woof in the texture of social organization.

§ 66. Very early in the progress of civilization the practice of equity arose as a complementary extension of legality. The ancients, in measuring building material of irregular surface, used a flexible leaden rule. Equity, like a leaden rule, bends to the specialities of each case, while the iron rule of enacted law is inflexible.[1] Circumstances alter cases,

her revolt in burying Polynices as an example of appeal to natural justice. Turning to Act. ii, scene 5, we find that Creon, the ruler, asks:

"And didst thou dare to disobey my law?"

Antigone replies:

"I had it not from Jove, nor the just gods
Who rule below; nor could I ever think
A mortal's law of power or strength enough
To abrogate th' unwritten law divine,
Immutable, eternal, not like these
Of yesterday, but made ere time began."

[1] Equity, *τὸ ἴσον*, *τὸ ἐπιεικές*, *vs. τὸ δίκαιον*, *τὸ νομικόν*, is that kind of justice which corrects the irregularity or rigor of enacted law. "Just and equitable are the same, . . . not that justice which is according to law, but which is the correction of the legally just. . . . It is a correction of law wherever it is defective owing to its universality."—ARISTOTLE, *Nic. Eth.*, bk. v, ch. 10. In the early Roman Empire, however, *æquitas*, *jus æquum*, was *jus gentium*, the law applied to subject peoples, as distinguished from *jus prætorium*, the law *Urbis Romæ;* later, the two were fused into *jus civile*, the Roman law.

The leaden rule was used in the Lesbian architecture, which "appears to have been a kind of Cyclopean masonry, and may have remained in

and law rigidly applied may work injustice. *Summum jus, summa injuria.* Laws are expressed in general terms, and being framed with reference to ordinary cases, it often happens that the actual cases involve matter beyond their scope. Moreover, there are many matters requiring adjudication for which the laws make no provision. It is the part of equity to supply such deficiencies by special action. Thence have arisen courts of equity or courts of chancery, distinguishable from courts of law. The decisions of a judge in equity are regulated, when there is no binding precedent or statute, by reference to the original principles of justice which give rise to enacted laws; hence his decisions are a species of legislation, judicial legislation. In the development and refinement of common and statute law, many of the approved decisions in equity have become incorporated in those systems; and equity itself, being more and more determined by precedent, has become assimilated to the common law. Hence in many of our States there is a fusion of official function, the same court, sometimes on the same case, sitting now in law, now in equity.

Casting off these limitations of its technical and juridical sense, the exercise of equity in the common intercourse of men is the doing what is equal, fair and right.[1] It is the

Lesbos from the early Pelasgian occupiers of the island. Polygonal stones were used in it, which could not be measured by a straight rule. *Cf. Æschylus Fragments*, 70: 'Αλλ' ὁ μὲν τις Λέσβιον κῦμ' ἐν τριγώνοις ἐκπεραινέτω ῥυθμοῖς — where κῦμα means a waved moulding."— Sir A. Grant, *Aristotle's Ethics*, bk. v, ch. 10, note.

[1] "In the most general sense we are accustomed to call that equity which, in human transactions, is founded in natural justice, in honesty and right, and which properly arises *ex æquo et bono.* In this sense it answers precisely to the definition of justice or natural law, as given by Justinian in his Pandects: *Justitia est constans et perpetua voluntas jus suum cuique tribuendi.* And the word *jus* is used in the same sense in the Roman law, when it is declared that *jus est ars boni et æqui.*"— Story, *Comment on Equity*, p. 1.

equitable between man and man, grounded on equal subjection to moral law or equality of rights among men, whether formulated in contracts, or existing in their merely natural relations. The distinction between equity in this general sense and the justice administered by the courts, that is, between the claims of human charity or natural justice and the claims of legal justice, corresponds nearly with the distinction between imperfect and perfect rights; a distinction, however, that is merely practical, not essential.[1] Equity, in its wide sense, and natural justice are coextensive, and both are synonymous with right; etymologically, the opposite of justice is injury, of equity iniquity. The notion of equity and justice limited to jurisprudence, is a narrow and inadequate view bounded by a rugged horizon; but in their large and proper meaning they expand over the whole sphere of obligation, and are equivalent to rectitude and righteousness.[2]

§ 67. Mercy is righteous forbearance toward an offender. It implies kindness or gentleness, and is prompted by pity or compassion. These feelings, when intense, are apt to induce a sentimental aversion to the claims of strict justice.

[1] Wolfius says: "*Justum appellatur quicquid fit secundum jus perfectum alterius; æquum vero quod secundum imperfectum.*" *Cf. supra*, § 36, note.

[2] "To say that there is nothing just or unjust but what is prohibited or commanded by positive laws, is like saying that the radii of a circle were not equal till you had drawn the circumference." — MONTESQUIEU, *Spirit of the Laws*, bk. i, ch. 1, p. 3.

"It is equity to pardon human failings," says Aristotle, "and to look to the lawgiver and not to the law; to the spirit and not to the letter; to the intention and not to the action; to the whole and not to the part; to the character of the actor in the long run and not in the present moment; to remember good rather than evil, and good that one has received, rather than good that one has done; to bear being injured, τὸ ἀνέχεσθαι ἀδικούμενον; to wish to settle a matter by words rather than by deeds; lastly, to prefer arbitration to judgment, for the arbitrator sees what is equitable, but the judge only the law, and for this an arbitrator was first appointed, in order that equity might flourish." — *Rhetoric*, bk. i, ch. 13.

Hence mercy is popularly supposed to be in opposition to justice, implying a disposition to overlook injury, and to mitigate or even wholly remit the penalty that sanctions the law. Such displacement of justice is not righteous forbearance, and so is not true mercy, but a weak indulgence of wrong that upholds license and works injustice. True mercy forbears, whatever legal forms may allow, to exceed or to abate the claims of natural justice.[1]

Every man is necessarily a judge, not only of his own actions, but also of those of his fellows. Whether his judgment find utterance in words and deeds of requital or not, he is bound to be just. Any excess of severity is injustice to the subject; any abatement of righteous rigor is injustice to society whose welfare is involved in the right judgment of

[1] It may thereby come into conflict with rigorous legal justice adhering to the letter of the law. Portia's exquisite speech, *Merchant of Venice*, Act iv, sc. 1, l. 181 *sq.*, though familiar, cannot be omitted here. In court, speaking to the defendant, says —

Portia. Do you confess the bond?
Antonio. I do.
Portia. Then must the Jew be merciful.
Shylock. On what compulsion must I? Tell me that.
Portia. The quality of mercy is not strain'd,
It droppeth as the gentle rain from heaven
Upon the place beneath; it is twice blest;
It blesseth him that gives and him that takes.
'Tis mightiest in the mightiest; it becomes
The throned monarch better than his crown;
His sceptre shows the force of temporal power,
The attribute to awe and majesty,
Wherein doth sit the dread and fear of kings;
But mercy is above this sceptred sway;
It is enthroned in the hearts of kings,
It is an attribute to God himself;
And earthly power doth then show likest God's
When mercy seasons justice. Therefore, Jew,
Though justice be thy plea, consider this,
That, in the course of justice, none of us
Should see salvation; we do pray for mercy;
And that same prayer doth teach us all to render
The deeds of mercy. I have spoke thus much
To mitigate the justice of thy plea.

its members. Mercy is shown in forbearing to do or even to think what is not strictly just.[1]

The judge on the bench must be just. Usually, by the very terms of the law which he is set to administer, he has a measure of discretion; but he must not transgress its sharply defined bounds, and within these he is to use discretion, not license. The range is allowed, not for the play of pity or of resentment, but in order that he may mercifully adjust his decree to the peculiarities of a case. Too great severity is injustice to a party present; too great leniency is injustice to society whose interest he is empowered to guard.[2] Judicial mercy secures a righteous forbearance of trespass on either, thus not merely coexisting but coinciding with strict justice.[3] The criminal law is merciful in holding the accused innocent until proved guilty, and in giving him the benefit of doubt; which is but just.[4] With a chief executive or sovereign is

[1] "O man, what is good; and what doth the LORD require of thee, but to do justly, and to love mercy, and to walk humbly with thy God?" — MICAH, 6: 8.

[2] Observe that penal justice is quite commonly miscalled justice to an offender. He has a right to fair trial, that is justice to him. But condemned and punished, this cannot be called justice to him; for, he having forfeited certain of his rights, the penalty inflicted is not a concession to these, but to the rights of society, and so his just punishment is in justice to the community whose welfare is involved. For the ethical ground of punishment, see *infra*, § 136.

[3] "Mercy but murthers, pardoning those that kill."
— *Romeo and Juliet*, Act iii, sc. 1, l. 212.

"Mercy is not itself, that often looks so;
Pardon is still the nurse of second woe."
— *Measure for Measure*, Act ii, sc. 1, l. 298.

Isabella. "Yet show some pity.
Angelo. I show it most of all when I show justice;
For then I pity those I do not know,
Which a dismiss'd offence would after gall;
And do him right that, answering one foul wrong,
Lives not to act another."
— *Idem*, Act ii, sc. 2, l. 99 *sq.*

[4] A strict construction, a rigid adherence to the letter of the law, is required, lest liberty in adjudication become license. Hence culprits are not infrequently discharged with impunity, an injustice to society for which

lodged a pardoning power. This prerogative of clemency is not for sentimental exercise, but for the equitable adjustment of penal desert and general welfare. It is mercy, but also it is justice.[1]

there seems no remedy; but, indeed, it is accounted more wholesome for society that a culprit escape condemnation, than that the innocent suffer. See *Genesis*, 18: 20–33. Beside this, our laws abound in mercies. See trial by jury secured by our *Constitution*, Article iii, § 2, and certain other merciful provisions in the *Amendments*, Articles iii–viii.

[1] The suffering engendered by injustice is worthy of note. Suppose two persons thoroughly alike in character and standing, condemned for like crimes to like terms of imprisonment, but the one innocent, the other guilty. Which would you prefer to be? The innocent one. In Xenophon's *Apology*, 28, Apollodorus exclaims: "To me, Socrates, the hardest part is to see you suffer death without just cause." To which Socrates, stroking the other's hair, replies: "Would you then, dearest Apollodorus, prefer to see me suffer death for a just cause?" Yet which suffers more? The innocent one. For in the penalty of guilt there is the solace of requital, which consolation is not with the innocent sufferer. "So it is that to the unregenerate Prometheus Vinctus of a man," says Carlyle, "it is ever the bitterest aggravation of his wretchedness that he is conscious of virtue, that he feels himself the victim, not of suffering only, but of injustice." — *Sartor Resartus*, ch. 7.

But, apart from penalty, which is the greater evil, to do or to suffer injustice? To do injustice. This is Plato's answer in the *Gorgias* and in the *Republic;* also Aristotle's in *Nic. Eth.*, bk. v, ch. 11, 6 *sq.*, where he says: "To injure is the worse of the two; for to injure involves depravity, and is culpable." This is the ground of Plato, who says: "Assuming the three-fold division of the soul, must not injustice be a kind of quarrel between these three, a meddlesomeness and interference and rising up of a part of the soul against the whole soul, an assertion of unlawful authority, which is made by a rebellious subject against a true prince, of whom he is the natural vassal? The confusion and error of those parts or elements is injustice. For the doing of justice is the working of a natural order and government of one another in the parts of the soul, and the doing of injustice is the opposite." — *Republic*, bk. iv, 444 *Step.*, Jowett's trans. Trendelenburg, in *Naturrecht*, § 39, advocates this view. See Lorimer, *Institutes of Law*, p. 152. So Brutus, in *Julius Cæsar*, Act ii, sc. 1, l. 63 *sq.*, says:

> "Between the acting of a dreadful thing
> And the first motion, all the interim is
> Like a phantasma, or a hideous dream;
> The Genius and the mortal instruments
> Are then in council; and the state of man
> Like to a little kingdom, suffers then
> The nature of an insurrection."

Shall not the judge of all the earth do right? Justice and judgment are the habitation of his throne, mercy and truth go before his face. He is long-suffering and of great mercy, forgiving iniquity and transgression, yet in no case clearing the guilty. Justice, no less than mercy, is an essential attribute to God. He, as absolute sovereign, decrees unbounded mercy to the penitent, and vindicates the claim of immutable justice by a vicarious sacrifice. Such is the Christian scheme; such is divine mercy.

CHAPTER VIII

DUTY AND VIRTUE.

§ 68. The obligations, both active and passive, laid upon us in the moral law are duties. Duty is the name of a relation, and so requires two terms. Every duty is because of something due from one person to another. It is the relation of debtor to creditor. Honesty, honor requires the payment of debt. The commercial meaning of dues or debts is merely a specific application of the essential sense inherent in these terms in their general application to every phase of human obligation.[1]

To withhold what is due another is a violation of his right, is an unwarranted interference in his liberty of action, is a trespass, and is forbidden by the moral law. But to

[1] Duty is an abstract term; due is the concrete, meaning owed as a debt, from O. Fr., *deu*, pp. of *devoir*, from Lat. *debere*, to owe. Debt is also from Lat. *debere*, to owe, *debita*, a sum due. Ought is an old preterite of to owe, to possess (another's property), hence to be in debt. Shakespeare sometimes plays upon this early meaning of to owe; e.g.:

> "I owe you much, and, like a wilful youth,
> That which I owe [own] is lost."
> — *Merchant of Venice*, Act i, sc. 1, l. 146.
>
> "Be pleased then
> To pay that duty which you truly owe
> To him that owes [owns] it."
> — *King John*, Act ii, sc. 1, l. 247.

With Cicero *officium* means a duty performed, a service rendered, a function fulfilled as an object of moral obligation. See *De Officiis*, i, 3. He uses *honestum* in the wide sense of what is honorable, decent, virtuous. "*Honestum aut ipsa virtus est, aut res gesta virtute; honestum a virtute divelli non potest.*"

forbid non-payment is to command payment. Pay thy dues. Owe no man anything. We must pay what we owe. We ought to render to every man his own, that is, what we owe him. These are but varied expressions of the one injunction, Trespass not, Be thou just, Do thy duty. Ethics may fairly be defined as the science of duty.[1]

§ 69. Right and duty are coextensive, merely different aspects of the same notion. Right belongs to the action, and is conformity to law. Duty belongs to the agent, and is subjection to law. Hence they imply each other. That whatever is duty is right, is quite evident. That whatever is right is duty, is readily seen. For, each case as it arises is subsumed under the law, or under rules, maxims of conduct, deduced from the law, and a conclusion is drawn as to what is right, what ought to be done. Now from given premises, if the terms be unambiguous and the reasoning correct, only one conclusion can follow, certainly not two or more essentially different. Therefore, in every conceivable situation there is for the moment one and only one course that is right; and this action alone being right it ought or

[1] Duty, properly, literally, is a function of persons only, they acting in the light of conscience. Yet a horse is said to be doing its duty when it willingly does its work; and a clock when it keeps good time. Each is fulfilling its function, but to speak of this as duty is figurative speech.

Brutes, since they are without conscience and personality, have no duties, and accordingly relative to them we have, strictly speaking, no rights, but merely property claims. We claim and enforce their service, and take their lives for food. Those that are a nuisance we drive out or kill, as weeds, by virtue of eminent domain. But relative to brutes, they having rights, we have duties; to our domestic animals especially, food, shelter and mild usage are due. A pain-giving trespass is cruelty. Hunting, fishing, merely for sport, is a relic of barbarism, is cruel and wrong. Unwarranted vivisection is a crime. See *supra*, § 24, note; also, for the views of the present writer, an article on "The Moral Aspects of Vivisection," in *The North American Review*, for March, 1885.

owes to be done. When an action is clearly conceived to be right, that action and that alone is duty.[1]

It is a corollary that duty is but another name for obligation, whose measure is found in the full application of the whole law to the whole life. Also it follows that duties never conflict. Often we are confused and in doubt as to the particular obligation, but of two possible acts, one being right, the other is wrong. There is no "divided duty." Moreover, it is wrong, *ex vi termini*, to do less than one ought to do; also it is wrong to do more, this being an expenditure that is due elsewhere; for example, to overpay a

[1] "Le devoir et le droit sont frères. Leur mère commune est la liberté. Ils naissent le même jour, ils se développent et ils périssent ensemble. On pourrait même dire que le droit et le devoir ne font qu'un, et sont le même être envisagé de deux côtés différents. Qu'est-ce, en effet, que mon droit à votre respect, sinon le devoir que vous avez de me respecter, parce que je suis un être libre? Mais vous-même vous êtes un être libre, et le fondement de mon droit et de votre devoir devient pour vous le fondement d'un droit égal, et en moi d'un égal devoir." — Cousin, *Du Vrai du Beau et du Bien*, Douzième Leçon, § 4.

In Lieber's biography we find that his life "was a continual exposition of his favorite motto: 'No right without its duties; no duty without its rights.' Whence came it? A letter to Judge Thayer, in 1869, gives the Genesis of this Deuteronomy. Lieber, bound for Greece, with his freedom-loving comrades, in 1822, saw at the end of the schooner's yard-arm a little flame. 'That's bad indeed,' said the captain, who explained that the flames (electric lights) were called Castor and Pollux, or St. Elmo's fire. If both appeared, it foretold fine sailing; if only one, foul weather. 'I thought,' says Lieber, 'this is like right and duty; both together, and all is well; right alone, despotism; duty alone, slavery.'" — President Gilman, in *The Century* for Sept. '83, p. 793.

Patrick Henry, in his famous argument in the British Debt Cause, delivered in Richmond, Va., Nov., 1791, says: "Rights and obligations are correspondent, coextensive, and inseparable; they must exist together or not at all. . . . If then the obligation be gone, what is become of the correspondent right? They are mutually gone." —Wm. Wirt Henry, *Patrick Henry*, vol. iii, p. 621.

Some writers condition rights on duties, reversing the view taken in this treatise. Thus Trendelenburg; also Lotze, *Pract. Phil.*, § 32. See also Hyslop, *Ethics*, ch. x.

bill. Sometimes one ought to do all he can; he is never bound to do more, but frequently less.

The essential identity of justice and right, and of injustice and trespass, has already been indicated.[1] Hence it sufficiently appears that, right and duty being equivalent, justice and duty are likewise equivalent terms. In a didactic treatment of ethics, it is far less important to mark the shades of distinction among these synonymous terms, a right, right, justice, equity, mercy, obligation, duty, than it is to show distinctly that, as to their essence, they are one and the same, and that a violation of any one is a wrong, an injustice, a trespass.

§ 70. An action conforming to moral law is a virtuous action. This qualification implies a contrary inclination overcome by will. It is the doing of justice, the performance of duty, in a particular case, wherein the agent was tempted to disregard obligation by an opposed desire, against which there was a voluntary struggle ending in its subjection. A virtuous person is one with whom the voluntary suppression of wrong desire is habitual, he subjecting himself uniformly to the law of duty, and thus molding his character anew. Under the law of habit, that our faculties acquire facility and strength by exercise, the righteous desires of the virtuous person prevail more and more uniformly, while their opposites, denied the nourishment of gratification, become weaker and suffer atrophy; until, finally, when and although all conflict, all struggle, has ceased, the victor, because of his victory, is dubbed a perfectly virtuous person.

The abstract name of this mark is virtue.[2] In general,

[1] See *supra*, § 63. For Kant's doctrine of duty, see *infra*, § 86.

[2] From Lat. *virtus*, strength, vigor, valor; cognate with *vir*, man, manhood; equivalent to ἀρετή, prowess, the Homeric notion of worth, cognate with Ἄρης, Mars, the god of war. Thus virtue implies opposition to be overcome, exertion of strength, vigor in overcoming, a struggle going on.

virtue is the conformity of will to the law discerned by practical reason or conscience. This definition implies that all subjective activities are regulated, duly coördinated and subordinated, so that each fulfills its normal function; thus enabling objective activities to attain their highest efficiency. Primarily it indicates the subjection of the craving to the giving desires; secondarily, the bringing of the members of each class into harmonious coöperation. Otherwise there is a continual strife, the lust of the flesh against the spirit and disorderly preferences of each, that is incompatible with perfected virtue. Such entire harmony is perhaps an unattainable ideal, but in human nature there is a native impulse toward it, and an ability to approximate it. Virtue, then, is a proficiency in willing what is conformed to practical reason, developed from the state of natural potentiality by practical action.[1]

In a certain narrowed sense virtue is synonymous with chastity. More properly and widely the factitive forms to chasten, to chastise, from Lat. *castus*, pure, mean to purify, to correct, by reproof or penalty. "Whom the Lord loveth, he chasteneth." *Cf.* to castigate. As chastity implies purity, so virtue implies victory. Too often "on vante la vertu, mais on la laisse se morfondre." — GABORIAU. Too often its majestic severity chills us; "*probitas laudatur et alget.*" — JUVENAL. Yet, as said by Plato, "virtue is the health and beauty and well-being of the soul, while vice is its disease, weakness and deformity." — *Republic*, bk. iv, 444, Step. The Lady, in Milton's *Comus*, l. 210 *sq.*, beset by "a thousand fantasies," says:

> "These thoughts may startle well, but not astound
> The virtuous mind, that ever walks attended
> By a strong siding champion, Conscience.
> O welcome, pure-eyed Faith; white-handed Hope,
> Thou hovering angel girt with golden wings;
> And thou unblemished form of Chastity!
> I see ye visibly, and now believe
> That He, the Supreme Good, to whom all things ill
> Are but as slavish officers of vengeance,
> Would send a glistering guardian, if need were,
> To keep my life and honour unassail'd . . .
> Was I deceived, or did a sable cloud
> Turn forth her silver lining on the night?"

[1] This last definition is according to Aristotle, *Nic. Eth.*, bk. ii, ch. 6, with whom ἀρετή is a ἕξις, a *habitus*. Virtue has been characterized as

§ 71. The cardinal virtues, as commonly listed, are fortitude, prudence, temperance and justice. The distribution originated with the Greek philosophers, and still holds in modern literature. They are called cardinal, because the specific virtues hinge on them, and indeed they seem to be conditions rather than kinds of virtue.[1] Each may be considered a fountain from which virtues flow. The Pythagoreans and Plato regard fortitude, prudence and temperance together as the source of justice, and justice as the genius of all duty, of all virtue, the perfection of human nature and of human society. With Aristotle also, justice is perfect virtue, yet not absolutely, but in reference to others. In this wide sense we have used the term justice, viewing it as the sum of all virtues, which are but variations upon its essence, and are universally prescribed in the concrete commandment, Be thou just.

§ 72. The man who disregards moral law, or in whom the desire to do right is weak, passes, by frequently yielding to

adopted when prompted by inclination or native bent of mind; as *genuine* and *ethical* when prompted by principle.

[1] Socrates (according to Xenophon), Plato, Aristotle and Zeno, each presents a varied list. Turning to the O. T. Apocrypha, in the book of *Wisdom*, written in Greek, and ascribed by Jerome to Philo of Alexandria, we find, 8:7: "If a man love righteousness, her labors are virtues; for she teacheth temperance and prudence, justice and fortitude; which are such things as men can have nothing more profitable in their life." *Cf.* the list of Christian virtues in *Galatians* 5:22, 23.

In *Nic. Eth.*, bk. ii, chs. 6–9, Aristotle elaborates his doctrine that "every ethical virtue is a mean state between two vices, one on the side of excess, and the other on the side of defect." Thus courage is the mean between temerity and cowardice; temperance, the mean between inordinate desire and stupid indifference; liberality, the mean between prodigality and parsimony. Hence the familiar phrase "a golden mean."

With reference to prudence, let it be remarked that, taken in its best sense, it is much the same as the wisdom that is from above; see *James* 3:17. Whenever it is not strictly identical with duty, it is parallel to it, having the same direction, and the two become one there where parallel lines meet.

temptation, under the dominion of other desires. Especially the appetites are likely, by reckless indulgence, to acquire abnormal vigor, and drive the weakened will helplessly into gross excesses. The appetencies, in men of higher order, may take control, producing the refined voluptuary, the avaricious seeker after material wealth, the secluded scholar absorbed in the pursuit of "knowledge for its own sake," or the unscrupulous ruler ambitious of irresponsible power. The will, whose function it is to regulate these constitutional powers, restraining their exercise, and determining natural, which is normal and moral order, forsakes this high office, and becomes their servant. Thus the man is enslaved by his passions. His moral sense is deafened by their clamor, his actions are determined by their impelling energy, his independent self-mastery is lost, and his freedom is limited to a choice among contending masters and forms of obedience.

To prevent or to escape from such degraded and deplorable condition, one must, by good-will working in the light of conscience, bring all his powers into subjection to moral law. This regulation will give play to the faculties in their natural relations and proportions, which is the essence of right action, and will determine uniformity of fit conduct, which is moral order, the order of facts that ought to be. Such virtuous rectification secures peace, harmony, and the dignity of moral excellence.[1]

The virtue that brings our activities into due conformity with moral law is usually posited as the necessary condition of soul-liberty, and perfected virtue is identified with per-

[1] Virtue is simply natural, vice unnatural; man is made for virtue as a clock is to keep time. But he finds himself disordered. Self-mastery, harmonizing one's faculties, directing them to the right end, may seem to be within our power, but uniform human experience shows that when we would do good evil is present with us and in us. This state of human nature is fully set forth in the Scriptures, and that, as we cannot unaided accomplish rectification, we need regeneration.

fected liberty. In surmounting his passions and inclinations, one becomes a freedman, a freeman and a master. The sage, said the Stoics, feels but is without passion, he is not indulgent but just to himself and to others, he alone attains to the complete performance of duty, and thus he alone is free.[1] This is the common doctrine of moralists at the present day, and we are exhorted to the exercise of morality because of the worth of liberty.[2]

The liberty thus acquired is independence of unrighteous, discordant and distracting rulers. The virtuous man is freed from the dominion of overweening inclinations, of unholy lusts and passions. It is an ideal state, exciting our admiration and emulation.[3] But this liberty is merely relative, not absolute. In breaking loose from subjective bondage, we pass under the objective bondage of law, an exchange of one bondage for another. All language supports this view. We are bound to do duty, obliged or under obligation to be just, forbidden to trespass, and must submit to many pains in

[1] So Epictetus the freedman, whose favorite maxim was, Bear and forbear, *ἀνέχου καὶ ἀπέχου*, is reported by Arrianus, in the *Ἐγχειρίδιον*, 8, 9, as saying: "Freedom and slavery are but names respectively of virtue and vice, and both depend on the will. . . . No one is a slave (*δοῦλος*) whose will is free. . . . Fortune is an evil bond of the body, vice of the soul; for he is a slave whose body is free, but whose soul is bound; and, on the contrary, he is free whose body is bound, but whose soul is free."

[2] "The only perfect conception of liberty is perfect obedience to perfect law." — President Seelye.

"Intellectual freedom consists in the subjugation of the understanding to the truth, which delivers from errors, prejudices, and the babble of human opinions. Moral freedom consists in the submission of the will to duty, which is the practical outcome of truth. To do as we ought is liberty; to do as we like is slavery. Spiritual freedom consists in the bowing down of the whole man to God, who is revealed by the truth, and to serve whom is to be master of self and things." — Alexander McLaren.

[3] St. Paul says: "He that was called in the Lord, being a bond-servant (*δοῦλος*), is the Lord's freedman (*ἀπελεύθερος*); likewise he that was called, being free (*ἐλεύθερος*), is Christ's bond-servant (*δοῦλος*)."—1 *Corinthians*, 7:22. For further discussion of the matter, see *infra*, § 92.

fulfilling the demands of an inexorable law, constant vigilance being the price of impunity. This is not liberty, but rigorous bondage. It is a voluntary bondage, one that expands and ennobles our powers, satisfies the all-pervading and overwhelming sense of duty, and harmonizes the man with himself and with universal order. Still it is bondage. Strict morality is strict subjection. Absolute liberty is incompatible with law.

CHAPTER IX

SELFISHNESS

§ 73. Names of mental states with the prefix self abound in speech and literature. A few are, self-approbation, self-condemnation, self-denial, self-control, self-esteem, self-abhorrence, self-love. Many of this class of expressions probably have their origin in the fictitious idea of an *alter ego*. The human mind subjectively distinguishes between the ego as conscious and the ego as represented. The former, the consciousness of self, is an element in every feeling, is essential to the existence of any feeling, and is itself recognized as a feeling. The latter, the representation of self, is a normal and habitual cognition, wherein the ego contemplates itself as an object, distinguishes itself from itself, and views this subjective object as though it were really another self, an *alter ego*.[1] The idea of an *alter ego* is strengthened by a conflict of desires; the opposed impulses, being a pair, are personified as two selves. Moreover, the mind regards the objectified and personified self as a possession of the wholly

[1] Spirit is capable of becoming its own object. I am I; at once subject and object. "We find, on reflection, that what we call our spirit transcends, or is, in a sense, independent of the bodily organism on which it otherwise so entirely depends. Metaphysically speaking, this is seen in our self-consciousness, or power of separating one's self as subject from one's self as object, a thing wholly inconceivable as the result of any material process, and relating us at once to an order of being which we are obliged to call immaterial." — ILLINGWORTH, *Divine Immanence*. See *Elements of Psychology*, § 108 *sq.*, and § 226.

subjective self, and capable of being affected by it, which finds expression in such familiar phrases as one's self, control yourself, I hold myself responsible, and the like. The two are identified in the phrases I myself, he himself, we ourselves, they themselves.

This distinction between the conscious ego and the represented ego, is unreal, inasmuch as it contravenes the essential unity of the ego. Evidently, in thought it is a fiction, in speech a metaphor. Hence, although it is a natural, a normal mode of mind, there is need of caution lest it mislead us to commit the fallacy of figure of speech.

§ 74. The name self-love is commonly used to denote that longing for gratification which marks the craving desires when their end is self. But love is essentially a desire to benefit some other one, and this is contrary to the benefit of self. It necessarily implies a relation between two; in self there is really and literally but one. The compound word self-love is, therefore, a contradiction in terms, absurd literally, and can be allowed only as a metaphor derived from the fanciful idea of an *alter ego*.

But self-love is merely a misnomer, for the reality of the thing thus absurdly named is unquestionable. It is self-interest, or simply interest, egoism, selfishness, the opposite of love. For while love is desire to impart, interest is desire to profit. Egoism makes self the end, seeking one's own enjoyment and welfare at cost of or in disregard of another's. Psychologically it is the supremacy of the craving desires, the appetites and appetencies, over the affections; either disregarding these, or neglecting their call, or what is worse, a more intense and refined egoism, making the affections subserve self.[1] Clearly the term self-love is a euphemism, filching the name of love to sanctify what in truth is its contrary,

[1] See *supra*, §§ 5, 6.

interest, egoism, selfishness. That, however disguised, it is to be condemned, will sufficiently appear in the sequel.[1]

Closely related to the notion of self-love, is that of duty to self. Can I literally owe myself anything? Can I owe myself a dollar? How is it to be paid? By passing it from one pocket to another? Can I in any manner or measure be indebted to myself? Is anything due me from me? Duty is essentially the name of a relation between two; I myself am but one. I cannot possibly be in debt except to some other one. Hence the phrase duty to self is, in its terms, self-contradictory and absurd.[2] It, too, originates in the fancied *alter ego*, to whom the ego is said to be indebted as to another person. Clearly it is a metaphor, and deductions from the generic law of duty to this as a species of duty commit the subtle *fallacia figuræ dictionis*. As in the phrase love of self, so in the phrase duty to self, we detect selfishness again masquerading, now in the guise and under the sacred name of duty.

§ 75. But aside from terms the important question arises: Does not moral law command motives and actions that are selfish, that is, such as find in self an end? Moralists very generally answer affirmatively, and recognize a wide and weighty class of obligations terminating in self, having respect exclusively to self, impelled by self-love, and usually entitled duties to self.[3] For example, they teach that every

[1] It must be acknowledged that many eminent authorities hold a contrary view; *e.g.*, Aristotle, in *Nic. Eth.*, bk. ix, ch. 8, "Of Self-love"; Butler, *Sermons*, Preface, and i, xi; *et al.* In "the royal law," Thou shalt love thy neighbor as thyself, the phrase, as thyself, evidently does not command self-love, nor does it approve it, but merely sets up what is in fact, as men are, a high mark for attainment, one beyond the reach of most of us. There is no Scripture that commands or approves self-love. *Cf. supra*, § 48, note.

[2] Let it be remarked that the term obligation is from the verb to oblige, meaning to bind to, to bind together. Obligation binds, and the binding is of at least two together. *Cf. supra*, § 19, note.

[3] With Kant duties to self are even the source of all other duties. See

one owes it to himself to be temperate, that moderation, as opposed to excess in all things, is a duty to one's self, for the sake of one's own personality, and in order to self-culture. Popular speech also quite commonly recognizes, and is disposed to emphasize, duties to self, usually holding them paramount. It is heard in the every-day phrases, I owe it to myself, he was bound in justice to himself so to do, and the like.

Postponing for the present a direct argument of the question, we here observe merely that, if a man be morally bound in any case whatever to make himself an end, or in other words, if there be any real thing answering to the lame phrase duty to self, then the moral law as heretofore formulated in this treatise is quite inadequate. For trespass necessarily implies at least two parties, and the given interpretation of duty and of justice, though very wide, presumes always a relation between two. Obviously, then, our view of moral obligation, in its widest comprehension, does not include the notion of duties to self, indeed it excludes self as an end.

And truly there is no duty to self. In this case the phrase is not merely a misnomer, for there is nothing corresponding to it in any admissible sense. Self is never, can never be a moral end, but on the contrary, all selfishness or egoism is violation of moral law. Duties, obligations universally relate to others, and selfishness is sin.

§ **76.** Let us briefly examine one or two of the duties usually classed as duties to self, and indicate their altruistic interpretation.

Grundlegung, etc., S. 56 *sq.;* Abbott's trans., p. 65 *sq.* Elsewhere he says: "Supposing that there are no duties of this kind, then there would be no duties of any kind; for I can only think myself under obligation to others as far as I am under obligation to myself." *Per contra*, Martineau says: "Duties to self can be saved from contradiction only by an impossibility, namely, the splitting one's self in two, susceptible of reciprocal obligation."

Temperance or the control of appetites and passions, bringing them into conformity with reason, subjecting them to moral law, is commonly cited as one of the most comprehensive and prominent duties to self. Is it my duty to be temperate? Certainly. It is a cardinal virtue. Is it a duty I owe to myself in order to the perfection of my character? Is it a discipline in the process of self-culture for the sake of my personal excellence? Assuredly, say nearly all the moralists, both ancient and modern, it finds in self its end.

To be temperate is a primal duty, a weighty obligation; but it is strictly a duty, an obligation, to others. I owe to God, my maker and highest benefactor, to modulate into harmony the powers he has given me, that I may fulfill the mission on which he has sent me, and accomplish the work he has assigned me in the world. I ought to be temperate, husbanding my energies, that I may serve my family, my neighbor, the community, the state, mankind, as fully and completely as possible. Unless I be temperate, I cannot pay these dues. Moreover, I ought to be an example, in this golden mean, to my fellows, inclining them to its practice. Temperance is one of the highest obligations. It is the top round in the ladder of Christian graces. It ennobles. Still it is due, not to self, but to those around.[1]

[1] For the graces, see *Galatians*, 5 : 22, 23. Closely allied to temperance is economy. Do I owe it to myself to be economical? No; yet it is a duty, a real duty. I am but a steward, and am bound to economize my time, my energy, my property, because of my relations. Man is instinctively an economist. He naturally takes the short cut, the straight line. Also he takes what lies near as requiring less reach, and is, when calm, sparing even of unnecessary words. The habit is fostered, perhaps, by mere laziness or other selfish consideration; but one ought always to prefer frugality of means in attaining his proper ends, because this also is due. Economy generally takes part as one rational determinant in choosing, and often, in cases of light moment, is the sole determinant. Carelessness or thoughtlessness, excessive animal spirits, excited nerves, may neglect economy of effort; but this is waste, and all waste is wrong. To be economical, frugal,

The pursuit of truth for the sake of truth is regarded as a refined and noble avocation. "Knowledge for its own sake" is a high sounding phrase; but it is merely a euphemism concealing the reality, which is knowledge for one's own sake, a refined selfishness. But the worth of knowledge is in its power for good, and he who possesses it in large measure is a king among men. Every one is in duty bound to increase his stores, solely that he may thereby more efficiently promote the welfare of the present and the coming generations.

Much the same may be said of the duty of preserving life and health and strength. These belong not to me save in trust. They belong to my relatives and friends, to mankind. I am a guardian and agent. So of the duty of physical, mental and moral culture. I am bound to account with usury for the talents intrusted to me. So of cleanliness,

sparing of energy, is prudence, wisdom, duty, both private and public, personal and political, a saving for expenditure elsewhere. "*Je loue l'economme; c'est la richesse des pauvres, et la sagesse des riches.*" — DUMAS.

The earlier political economists based their science on the aphorism that men are governed by interest, that in affairs selfishness determines conduct. Hence Carlyle dubbed it "the dismal science." But viewing economy as a duty, this reproach disappears, and Economics, so far as it depends on will, becomes a branch of Practical or Applied Ethics. This, however, would not greatly modify its other principles. For it is remarkable that industry, though so largely directed by interest, works out for society about what would follow from a strict observance of duty. The farmer, the manufacturer, the merchant, whether laboring for his own or for the common weal, accomplishes in the long run the same general result. "To men is not given that God-like unselfishness that thinks only of others' good; but in working for themselves they are working for us all. We are so bound together that no man can labor for himself alone. Each blow he strikes in his own behalf helps to mold the universe. Stephenson, to win a fortune, invented the steam engine. Shakespeare wrote his plays to keep up a comfortable home. The ambitious man, building a pedestal for himself, leaves a monument to posterity. Alexander and Cæsar fought for their own ends, but, in doing so, they put a belt of civilization half round the earth." Such is the beneficent world-ordering of human affairs.

decency, modesty, propriety, in private as well as in public. So of the preservation of my personal dignity and self-respect, of my honor, sincerity and truthfulness. Even the indulgence of innocent pleasures should be primarily for recreation, preparing me for renewed efficiency in paying my dues. The supply of necessities should ever be governed by the same general purpose, so that whether we eat or drink, or whatsoever we do, let all be done for others' sake.[1]

§ 77. This doctrine is not ascetic, but altruistic.[2] It transfers the end of all right action from an exclusive self to its fellows. All righteous conduct is disinterested, unselfish. The moral law, Trespass not, or Be just, or Do duty, is equivalent to, Withhold no due, but bestow in due measure. We say in due measure, for not all giving is righteous; a

[1] See 1 *Corinthians*, 10: 31. Robert Browning, in *Balaustion's Adventure*, l. 1212 *sq.*, and 1723 *sq.*, speaking of Herakles banqueting between his labors, expands the aphorism, *Neque semper arcum tendit Apollo*, thus: He was —

> "glad to give
> Poor flesh and blood their respite and relief
> In the interval 'twixt fight and fight again —
> All for the world's sake; . . . .
> . . . . . frank and free,
> Out from the labor into the repose,
> Ere out again and over head and ears
> I' the heart of labor, all for love of men;
> Making the most o' the minute, that the soul
> And body, strained to height a minute since,
> Might lie relaxed in joy, this breathing-space,
> For man's sake more than ever; till the bow,
> Restrung o' the sudden, at first cry for help,
> Should send some unimaginable shaft
> True to the aim and shatteringly through
> The plate-mail of a monster, save man so."

[2] Altruistic, from Lat. *alter*, other, regardful of others. See *infra*, § 83, note. Ascetic, from Grk. ἄσκησις, exercise, training. Asceticism, a distorted out-growth from early Stoicism, is the exercise of the soul in suppressing and stifling many of the normal impulses, apparently holding that whatever is natural is wrong. The early Stoics taught, on the contrary, that whatever is natural is right (see *supra*, § 25, note), which is also the doctrine of the present treatise. Bentham, rather cynically, says: "Asceti-

lavish or a disproportionate distribution of means or of service is wrong, being an expenditure that is due elsewhere.

The virtuous exercise of self-denial, of self-sacrifice, when clearly understood, is not the giving up of what one has a right to retain and enjoy, but the yielding to another his due, discharging his rightful claim, according to him a right of which he is perhaps quite ignorant. Truly it is a parting with what I might keep, but what I have no right to keep. It is free, unconstrained justice.

While the chief, indeed the only end of life is usefulness, the promotion of the welfare of those to whom some one is related in accord with the relations, one is not thereby excluded from participating in his benefaction. The law, by this doctrine, forbids his making himself alone the end, and requires his regard and intent to be constantly beyond himself; but it does not prohibit his sharing, as a member of a community of two or more, the welfare he promotes. It does not require self-abnegation, nor entire self-forgetfulness, but that the inclination, the impulse, the motive and the intention be altogether benevolent.

It is a fact that in the judgment of mankind, for some reason or other, the practice of self-denial, of self-sacrifice, the exercise of affection, is held in high esteem, is accounted generous, noble, even heroic, and receives the warmest praise; while, on the other hand, selfishness, exclusive or excessive regard for one's own, is accounted ignoble, ungenerous, mean, and is heartily condemned. Disinterested motives and conduct are always praised; interested motives and conduct are

cism approves of actions in as far as they tend to diminish the agent's happiness, and disapproves of them in as far as they tend to augment it." — *Principles of Morals and Legislation*, ch. 2, § 3. Says Gibbon: "The ascetics renounced the business and the pleasures of the age, abjured the use of wine, of flesh, and of marriage, chastised the body, mortified [put to death] their affections, and embraced a life of misery, as the price of eternal happiness." — *Decline and Fall*, ch. 37.

always blamed. Why is this? Is it a delusion? Is it merely because when my neighbor works in his own interest, I have less of his help in mine? If so, then it is merely my selfishness that prompts me to condemn his. Is there not some less degrading, some better reason for the universal condemnation of interested action, and the universal approbation of disinterested service? Surely there must be, for I judge after this manner of the conduct of the ancients, whose conduct cannot possibly affect me. Yet there is a school of moralists holding that disinterestedness is a delusion, that human nature is incapable of a purely disinterested action, that all conduct resolves, in the last analysis, into self-seeking.[1] It is undeniable that selfishness generally prevails and is dominant. But let us distinguish between the actual and the potential, and heartily deny the impossibility of disinterestedness. Nay more, let us hold that purely disinterested conduct has sometimes been actually experienced, and also observed, and that it is truly the culminating perfection, the realization of ideal humanity.

§ **78.** The thesis is presented in the following questions: Why is it that the affections, the giving desires, have a rightful supremacy over the appetites and appetencies, the craving desires? Why is it that the moral law enjoins the practice of affections, impulses to benefit others, and forbids the in-

[1] So Spencer in *The Data of Ethics;* and others. In the egoistic school of Ethics it is maintained that human nature is incapable of a strictly disinterested action, that the expectation of one's own profit or reward enters into all cases of personal sacrifice as the fundamental, informing motive. But this cannot be said of extreme cases involving, under the impulse of duty, the sacrifice of life itself. There is often a total giving away of self, as in defensive warfare, with no thought of reward beyond death, in order that those who remain may have their rights. We claim, in opposition to Hobbes, Mandeville, Rochefoucauld, Spencer, and the rest, that purely disinterested actions are not only possible, but often actual.

dulgence of impulses craving a gain for self as an end? The reason lies deep in human nature.

Let it be granted that all constitutional desires have natural and therefore rightful aims, and should harmonize, thus sustaining each other in their normal functions. Also, that craving and giving are contraries, whence a conflict between appetency and affection, which two therefore do not accord but are in constant and inevitable discord, unless one become subservient to the other. That our desires should be brought into functional harmony, will hardly be denied. That this harmony can be attained only by the subservience of one to the other class, is evident. Which is entitled to supremacy?

Now suppose affection be made to subserve interest. What is the consequence? The impulse to benefit another is obscured under the impulse to benefit self. I treat my friend with apparent and professed affection, using the manner and language of friendship, my real intent being to obtain for myself a gain. Perhaps I indulge my generous impulses in order to cultivate my generosity, a virtue I desire to possess in myself. Evidently this is egoism or selfishness doubly refined, and therefore doubly odious. I degrade my friend into a mere means for my own profit, and so dishonor and wrong him. I do it under the form, and name, and profession of love, when in reality it is the contrary, base, self-seeking hypocrisy. If there be one character the most despicable of all, it is the hypocrite, he whom our Lord denounces in his most scathing terms.

But such procedure is something more than hypocrisy. It is the extinction of half of one's nature, of his affections. For, if I confer a benefit on my neighbor solely in order to benefit myself, this does not merely subject love to interest, since love is then no longer love, but simply interest. Love has ceased to be, and I am wholly, exclusively selfish. This is not the subordination and subservience of affection to

appetency, but the complete suppression and extinction of affection. A large part of the normal nature of the man disappears, and he stands in opposition to all his fellows. It is universal war; every man's hand against every other. Surely this is not the way to personal excellence, to perfection of character. Surely this violates the law. It is amazing that many moralists should hold it obligatory to cultivate our affections to the end that we may thereby perfect our own personality, thus advocating a principle which would result in the extinction of affection, and produce a character absolutely selfish.[1]

§ 79. Suppose, on the contrary, the craving desires be made subject to the affections. What follows? Are they likewise extinguished? Not at all. It is easy to understand how my appetency may, without loss, be made to subserve the ends of affection, craving various objects, not for my own sake as the end, but for the sake of those on whom I would bestow my energies and gains. Thus I may seek pleasure as a recreation, as a means of refreshing my powers for more efficient service. I may strive, with great earnestness and activity, to acquire property and increase my wealth, not from the miser's desire to possess, nor the voluptuary's desire to enjoy, but in order that I may bestow on others the benefits wealth commands, reserving for myself only such portion as is needful for further beneficence. I may cultivate my intellect, not for the sake of proficiency, but of efficiency. Further illustration is superfluous. But let us add, I may desire power in order to greater usefulness; and I may desire reputation, the esteem of my neighbors, or even fame, simply because my influence in favor of the welfare of others is therein extended. Evidently the craving desires may crave in order to give, that is, they may become entirely subject to

[1] So Janet in *The Theory of Morals*; and others.

the affections, and so far from being extinguished, they are thereby refined and ennobled, and their activity enlarged.[1]

We conclude that, since the subjection of the affections would quench them, but the subjection of the appetencies would advance them, the affections have rightful supremacy. Furthermore it follows that the right growth of character consists largely in this subjection of selfish propensities to the unselfish, and in so directing the former that they be no longer interested, but disinterested.

If it be objected that there are occasions for the exercise of affection, and other occasions for self-indulgence, the answer is easy. The claims of near relatives, of friends, of neighbors, of country, of mankind, of God, upon my means and energies, are paramount and exhaustive. Paramount, because these are dues, debts, duties, to be paid before self-gratification; exhaustive, since the totality of a devoted life fails to requite their righteous demands. Hence no hour, no dollar is my own to spend upon myself alone, regardless of my overwhelming indebtedness, of my unremitting and endless obligations.

It must be allowed that the scheme of character and conduct here proposed, is ideal, a high ideal, unattained and unattainable by any man. It calls for a declaration of truceless and internecine war upon selfishness. But selfishness so interpenetrates, in its many subtle forms and sacred guises, the human soul, interweaving its delicate fibers and gilded threads throughout our better nature, that to unravel and

[1] The acquisitions of my appetencies are my resources. Affection giving out from these does not impoverish, but only imparts so much as can and should be spared, economically reserving what is needed for continued efficiency. Sacrifice should rarely be total. In some cases the giving, as in the case of knowledge, does not diminish the store, nor does it weaken ability, but recuperates, refreshes, strengthens. Moreover, affection stimulates acquisition, so as to enlarge its available resources, which is the legitimate function of the appetencies.

wholly displace it seems impossible. The best of men, those morally most refined, are still more or less influenced by selfish propensities, and occupied with self-seeking. But to approximate, as nearly as may be, the moral ideal, is the true struggle of a noble life.[1]

[1] Even Saint Paul confessed to falling grievously short, but still kept up the struggle. See *Philippians*, 3 : 12–16. Says Carlyle : "David's life and history, as written for us in those psalms of his, I consider to be the truest emblem ever given of a man's moral progress and warfare here below. All earnest souls will ever discern in it the faithful struggle of an earnest human soul toward what is good and best. Struggle, often baffled sore, baffled down into entire wreck, yet a struggle never ended ; ever with tears, repentance, true, unconquerable purpose begun anew. Poor human nature ! Is not a man's walking in truth always that — a succession of falls ? Man can do no other. In this wild element of a life he has to struggle upward ; now fallen, now abased ; and ever with tears, repentance, and bleeding heart he has to rise again, struggle again, still onward. That his struggle be a faithful, unconquerable one, that is the question of questions." — *Heroes and Hero Worship.*

In connection with duties to self Martineau says : "Without objective conditions, the idea of *Duty* involves a contradiction, and its phraseology passes into an unmeaning figure of speech. Nothing can be *binding* to us that is not higher than we ; and to speak of *one part of self imposing obligation on another part*, — of one impulse or affection playing, as it were, *the God* to another, — is to trifle with the real significance of the sentiments that speak within us. Conscience does not *frame* the law, it simply reveals the law, that holds us ; and to make everything of the *disclosure* and nothing of the *thing disclosed*, is to affirm and to deny the revelation in the same breath." — *Types of Ethical Theory*, vol. ii, p. 4.

Again he says : "It takes two persons to make a duty ; for it is what I owe *to another*, and is not constituted by the interior egoistic relations of a single subject. No doubt, it makes a great difference to myself whether I do this or that ; but a difference which lies within the scope of *Prudence*, and involves no consequences but those of *error*. If I am a sot instead of a philosopher, you may call me a fool ; but the moment you say I am *responsible* and *must answer for it*, you assume the presence (society aside) of an authoritative Law ; that is, of a higher personality that has *rights* over me ; and such assumption lurks in every recognition by the conscience of a higher and a lower object of the will. Whatever, therefore, in action purely egoistic, may put on the aspect of something more than prudence, is duty, not towards ourselves, but towards God, the inspirer of conscience." — *Op. cit.*, vol. i, p. 231.

CHAPTER X

SERVICE

§ 80. The three expressions of the law already considered, Trespass not, Be just, Do duty, upon a liberal yet fair interpretation, taking each in both its positive and its negative sense, are evidently coextensive and have the same content. This will be allowed. But their common extension may perhaps be understood to be limited to the obligation to do no harmful injury to another, either positively by direct aggression, or negatively by reserve of what he may justly demand. Practically most persons take this view, holding that, if one commit no hurtful trespass, pay promptly his manifest dues, be just in thought and deed, by this simple innocence his obligations are completely fulfilled. Many a man holds himself acquitted before the tribunal of his own moral judgment, before that of his fellow men, and of his final judge, provided he can truly say he has committed no wrong, meaning thereby that he has done no violence to patent rights, and awarded to every one his established claims. This seems to have been substantially the doctrine of the Stoics. It is a high estimate of duty, and one rarely accomplished. Nevertheless, if the notion be thus limited, it is safe to affirm there are obligations higher than duty. But the indicated limitation is by no means clear, the line cannot be sharply drawn, and hence it is better to extend the notion of duty to include these higher and wider obligations.

Recurring to the moral principle, a man has a right to gratify his normal desires, we observe that not merely the

acquiescence, but the assistance, of his fellows, is essential to this gratification. No man can live for himself alone. Apart from his natural longing for social intercourse, there are necessities that can be supplied only by the concurrence of those around, and in addition to necessities, there are many native and normal wants that require the coöperation of others. Here, then, is a just claim upon their assistance, upon their service. It is his right, and if withheld, he suffers trespass. The service cannot be compulsory, from lack of power, except in rare cases, and therefore must be free, willing service. Now rights are reciprocal. If some one have a rightful claim upon some other for free service, then this other has a like claim upon him; not, however, by way of repayment, of compensation, but because such claim is original with either. Hence no man may live for himself alone. Every one is morally bound to render, within certain limits, willing service to his fellow men. It is due them; free, willing service is duty.

§ 81. The obligation to render mutual service is universally recognized among men. In all the relations of life, this duty, though so imperfectly fulfilled and often grossly violated, is nevertheless judged by all to be binding on all, and its observance to be an essential part of righteous living. The prompting of instinct, antecedent to moral inference, is decisive in the matter. Imagine an extreme case.[1] Suppose yourself standing on the brink of deep water in which a stranger is drowning, and it needs only that you reach out your hand to save him. Ought not you to do it? If you withhold the hand, and disregarding his cries for help and his manifest need, allow him to drown, would not your in-

[1] Extreme cases bring an informing principle more clearly to light, and hence are preferable for illustration. A principle, if true, will be thoroughly applicable to either extreme.

action be instinctively self-condemned and condemned by all as inhuman? Suppose him to be your friend, or your only brother; and, further, suppose that by letting him drown you shall obtain the whole instead of half the inheritance; would not even hesitation be intensely vile? Ought not a man to help his brother, his father, his mother, his child, his neighbor, his fellow man? There is but one answer in any candid mind, but one among all cultured peoples.

Again, let us suppose the drowning man to be known as a worthless vagabond, or even as a dangerous criminal whose death would be a blessed relief to his family, and to society — let him drown? No. Is it to give him time to repent and reform? Hardly. Suppose him, on the contrary, to be a godly man, afflicted with painful incurable disease, a distressing burden to himself, and to everybody else — let him drown? No. Stretch forth thy hand. Help, in the name of common humanity. The obligation of helpfulness has no other condition. It is binding in every personal relation. Setting aside the differences in concrete cases, there remains the common, imperative principle: Thou shalt serve.[1]

[1] An historical case occurring in the north of Holland, early in the year 1569, is narrated by Motley, in *The Rise of the Dutch Republic*, Part iii, ch. 5, thus: "A poor Anabaptist, guilty of no crime but his fellowship with a persecuted sect, had been condemned to death. He had made his escape, closely pursued by an officer of justice, across a frozen lake. It was late in the winter, and the ice had become unsound. It trembled and cracked beneath his footsteps, but he reached the shore in safety. The officer was not so fortunate. The ice gave way beneath him, and he sank into the lake, uttering a cry for succor. There were none to hear him, except the fugitive whom he had been hunting. Dirk Willemzoon, for so was the Anabaptist called, instinctively obeyed the dictates of a generous nature, returned, crossed the quaking and dangerous ice, at the peril of his life, extended his hand to his enemy, and saved him from certain death. Unfortunately for human nature, it cannot be added that the generosity of the action was met by a corresponding heroism. The officer was desirous, it is true, of avoiding the responsibility of sacrificing the preserver of his life, but the burgomaster of Asperen sternly reminded him to remember his oath. He accordingly

We have here another form of the law, but let it be observed, not another law. The law is one. The several forms may be viewed as progressing in comprehension, the second including the first, but wider, and so on, until this last expands to embrace the larger duty of man. That it includes the others is evident, for he who rightly serves will not trespass, and will pay his just dues. But it is preferable to interpret each as coextensive with the others, only presenting a different phase. Thus it may fairly be regarded as a trespass, as injustice, as undutiful to withhold helpful service, the moral law being comprised and expressed in the formula: Serve thy fellows.[1]

§ 82. To serve is to promote the welfare of another. He who does this is a servant. The term as applied to menials has acquired rather a bad sense, especially when the service is compulsory, and the cognate word servile is distinctly opprobrious. But no bad sense, indeed only the contrary, colors the notion of voluntary service, and of this we are speaking. To serve is to confer a benefit, and he who does this is a benefactor. A teacher is a servant, though we call him a master. He is a servant directly of his pupils, indirectly of his employers, of the public, of posterity. Poli-

arrested the fugitive, who, on the 16th of May following, was burned to death under the most lingering tortures."

[1] It is worth noting that Geometry, the science of Space, arises from the three axioms of *Non-inclosure*, *Straitness*, and *Possible parallelism;* that Logic, the science of Thought, arises from the three axioms of *Non-contradiction*, *Identity*, and *Excluded middle;* and that Ethics, the science of Rights, arises from the three axioms of *Non-trespass*, *Justice*, and *Loving service*. If in any of these several groups we try to deduce one of the axioms from the other two, we find that the axiom to be inferred is necessarily presupposed in the other two. Like the sides of a triangle, each gives, in its own existence, the existence of the other two. They are coordinate and complementary, distinct, yet inseparable. Accordingly we view the ethical axioms as different phases and expressions of an essence that is one and the same.

ticians proclaim themselves servants of the people, which truly is their office, though the profession be insincere. Husband and wife, parent and child, mutually subserve each other's interests.

A servant is a minister, and this is a title of honor.[1] Ministers of religion are servants of the Church, and as such are justly honored and reverenced. To become a Minister of State is to attain the highest official rank. The Prime Minister of Great Britain holds a place of exalted dignity. The motto of the Prince of Wales, descending to him from the Black Prince, is Ich dien, I serve, and perhaps no heraldic cognizance is more widely known, or more frequently quoted. A king on his throne is rightly the servant of his subjects; and the very King of kings pronounced himself a lowly servant, coming not to be ministered unto but to minister, and because of his humble service to humanity, he has the highest throne.

All service implies sacrifice. In reaching forth my hand to save a drowning brother, there is some expenditure of mental and neural energy, perhaps not measurable, but real. No service can be rendered without sacrifice, without giving, imparting what is in one's keeping. Hence the law of service is a law of sacrifice. Culture, in general, is preparation for yielding a return; specifically, as the cultured field is capable of yielding fruits, so the cultivated man is one prepared, by what he has acquired, to render services. When a sacrifice is complete and directed to a noble end, we call it heroic. The very essence of heroism is the entire sacrifice of self for

[1] Minister, a servant, from Lat. *minus*, less; *cf.* to administer, and administration. Master, from Lat. *magister*, from *majus*, more; *cf.* magistrate. In the Virginia Bill of Rights, § 2, it was perhaps first (June, 1776) authoritatively declared: "That all power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them." This great democratic principle is the gift of Christianity. See *infra*, § 146, note.

the sake of others. It is the object of unbounded admiration and praise. In ancient days it became distinctly a cult. But heroes and hero worship are not peculiar to antiquity, for always and everywhere the heart of humanity responds to the call. The heroic sacrifice of the great servant of all is commanding, not merely the admiration, but the adoration of mankind.[1]

[1] "Gladness be with thee, Helper of our world!
I think this is the authentic sign and seal
Of Godship, that it ever waxes glad,
And more glad, until gladness blossoms, bursts,
Into a rage to suffer for mankind,
And recommence at sorrow: drops like seed
After the blossom, ultimate of all.
Say, does the seed scorn the earth and seek the sun?
Surely it has no other end and aim
Than to drop, once more die into the ground,
Taste cold and darkness and oblivion there:
And thence rise, tree-like grow through pain to joy,
More joy and most joy, — do man good again."
— BROWNING, in *Balaustion's Adventure*, l. 1917 *sq.*; spoken of Herakles.

It is fitting here to observe that standard literature, especially of history, biography, and prose and poetic fiction, owes its position largely, perhaps chiefly, to its ethical elements, thereby appealing to the profound interest which men universally take in questions of right and wrong. Narratives of mere adventure, sentiments, mysteries, intricate plots, novelties, extravagancies, though of highest rhetorical finish, command but a passing attention, or have but an ephemeral popularity; while such as rightly apply ethical principles to life, hold permanently a high place in the esteem of the world. A skillful account of difficult duties well done, of brave endurance by an innocent sufferer, of resistance to sore temptation or the fall and rising again of the tempted, of stern repulsion of aggression, of struggles for liberty, of the heroic self-sacrifice of patriots, never fails to stir the heart of our common humanity, and to inspire a noble emulation. Very familiar to us all are the sturdy manhood and piety of Crusoe, the heroism of Leonidas and his Spartan band, the lofty steadfastness of Luther, the warning cry of d'Assas, the simple truthfulness of Jeanie Deans, it being divinely impossible for her to lie, the vacillation of Prince Hamlet, the torture of Othello, the unscrupulous ambition of Lady Macbeth, the wifely faithfulness of Imogene, the immaculate chastity of Isabella, and the filial piety of Cordelia. Minor incidents and characters are mere accessories. Shakespeare's most famous works, resolving questions of casuistry or developing the inevitable consequences of injustice, oppression and crime, are ethical treatises. They

§ 83. The constant service demanded by moral law is not to be indiscriminate. One is not to serve all others equally. Our obligations to our fellows vary very greatly in extent. To near relatives we are bound for more service than to those further removed; first, because the possibilities are greater; secondly, because service creates debt, and where intercourse is intimate the exchange of benefactions is more frequent; and thirdly, because in certain cases, as of husband and wife, the minute interdependence calls for minute reciprocation. The extent of obligation is to be judged by the law of trespass. My service is due to one in so far as I do not thereby trespass on the rightful claims of some other. I may, for example, distribute my fortune in alms so widely as to violate the rights of my children. Likewise I am bound to promote the general welfare of the state only in so far as I do not thereby trespass on the rights of individual citizens, or of neighboring states, either by encroachment, or by transferring to either the service due to the other.

Moreover, it should be particularly observed that the alien service required does not preclude the agent from participating in the benefit conferred. When a man labors for the welfare of his family without thinking of or caring for his own individual profit, still, as a member of the family, he shares in the beneficence. When one serves the community or his country, either by promoting or by defending the common interests, it is evident that, since the interests are common, he thereby enlarges his own liberty, and guards his own well being. If he does these things selfishly, himself his end, then he meanly degrades his family, his country, so far as in his power lies, to merely useful means; which treatment is unworthy, is a trespass, whatever be the result. But if, with no thought of his own interest or gain, he does those

discuss matter of deepest and of universal interest, and constitute a handbook of morals for mankind. See *infra*, § 133, note.

things unselfishly, making perhaps many painful personal sacrifices, still he shares in the beneficial results, is repaid and rewarded; and even should his efforts fail, he nevertheless enjoys the satisfaction of disinterested intent. Moral law does not prohibit any one from acting in a way that shall benefit himself, but only from thus acting in order that he may benefit himself.

These modifying considerations forestall the criticism usually and justly applied to strict altruism, that if every one should be constantly sacrificing his own welfare for that of others, there would be no permanent recipient of benefaction, and the perfection of morality on this basis would be not only a universal disregard of welfare, but also its annihilation. But according to the modified altruism of the present treatise, moral law does not call for such absolute self-sacrifice, for the extinction of the natural and healthful desire for one's own welfare.[1] It forbids this only as a personal end; and the gratification of the desire is provided for, in the economy of human nature, by the community of interests, so that whatever promotes the welfare of another redounds to the benefactor; for, although, in the existing disorder of society, the objective return fail entirely, still the subjective sanction is abundant reward.

§ 84. In view of the right to service arises the question, in what manner and to what extent may one use another person. According to Kant, never as a means, but only as an end. He says: "The foundation of this principle is: Rational nature exists as an end in itself. . . . Accordingly the practical imperative will be as follows: So act as to treat humanity, whether in thine own person or in that of another,

[1] Nor does Christianity make this call, though it is often charged with so doing. See *supra*, § 79, note.

in every case as an end withal, and never as a means only." [1] He argues that to make use of another person as a means whereby to accomplish one's end, degrades him from a person into a mere thing, thus violating his dignity, his worth as a man. Since this is to wrong him grievously, he should be treated only as an end in himself.

The doctrine is striking, and with qualification it is true. We should never use another as a means, unless with his own full knowledge and free consent. If, without this, I myself be used as a mere tool, then, on discovering it, I am indignant, feeling I have been treated unworthily, degraded and wronged, according to the measure of the abuse. But with the consensus of all parties, the using each other as means to rightful ends is justifiable. Indeed, the greater part of the amenities of life, the enjoyment and benefit of social intercourse, kindness, politeness, could not otherwise exist. Such reciprocal use does not degrade, it ennobles; and by consenting to become an instrumental means, one becomes a participant in beneficence. This privilege of using others is limited also to rightful ends. One may never seek to use another even with consent in a way or to an end that is wrong; for this would be inducing him to become a partner in wrong doing, which would be doing him a wrong. The point in Kant's doctrine that I should make myself in mine own person an end, we have previously rejected as the essence of egoism. On the contrary, I ought ever and actively to constitute myself an intelligent and willing means to the welfare of others, which is altruism.

§ 85. A very important corollary from the general doctrine of obligatory service is stewardship. Since unintermitting service is due from each one to others, according to his

[1] From *Grundlegung zur Metaphysic der Sitten*, Auflage der R. and S., Seite 57; Abbott's translation, p. 67.

relations, it follows that his time, his energy, his ability, his capital, his estate, whatever he may have in possession or acquire, is in reality not his own, but the property of those others, and he himself is their steward. The transient influence one may have on his surroundings, his daily walk and conversation, his health of mind and body, his life itself as the basis of all, these are held in trust, and are to be devoted to the well being of his fellow men![1] They are the owners; he, their agent. All is due, all is debt, ever paying, never paid. Not less is comprehended in the law of service.[2]

[1] Hence the deep criminality of suicide. Stoicism came short of the doctrine of service, and taught that the sage is lord of his life. From this teaching and the example of Zeno, together with the pessimism of the death-counseling Hegesias, resulted the horrible prevalence of suicide among the ancient Greeks and Romans. On the battle field of Philippi (B.C. 42), when their cause was lost, Cassius, Titinius, and hundreds of the nobles of Rome, together with Brutus, the noblest Roman of them all, in despair of the Republic, took refuge in self-slaughter. These did not see that suicide is the vile and wicked deed of a coward and thief. "La voix de l'honneur de l'homme lui cria-t-elle que se soustraire par la mort à la responsabilité de ses acts est une insigne lâcheté. Si irréparable que paraisse le mal qu'on a fait, il y a toujours à réparer." — GABORIAU. "Le suicide est un vol fait au genre humain." — ROUSSEAU. It is more, it is the fraud of a trustee, a total violation of a most sacred trust, it is robbery of both man and God; a strange mixture of cowardice and rashness. With open-eyed timidity he flees from the passing ills of life, and with blind temerity rushes unbidden into the eternal presence, hurling himself against the thick bosses of Jehovah's buckler.

[2] In *Measure for Measure*, Act i, sc. 1, l. 30 *sq.*, the Duke, a personification of watchful and retributive providence, says:

> "Thyself and thy belongings
> Are not thine own so proper as to waste
> Thyself upon thy virtues, they on thee.
> Heaven doth with us as we with torches do,
> Not light them for themselves; for if our virtues
> Did not go forth of us, 'twere all alike
> As if we had them not. Spirits are not finely touch'd
> But to fine issues, nor Nature never lends
> The smallest scruple of her excellence,
> But, like a thrifty goddess, she determines
> Herself the glory of a creditor,
> Both thanks and use."

We are bound, as trustees, not merely for the keeping, but also for the increase, the accumulation of our holdings. One's talents, whether of gold, silver or iron, of brain, brawn, bone, of intellect, sensibility, will, are all, whether great or small, to be put to usury, and a strict account rendered.[1] The servant who kept his Lord's pound laid up in a napkin was condemned as a wicked servant. Possessions are to be used, and used rightly, imbursed and disbursed, as dictated by the law of service, which demands a continuous distribution of our gifts.[2]

A further corollary is the obligation to guard and to defend possessions. Obviously one is bound to secure what is intrusted to his keeping against all comers, otherwise he cannot fulfill the obligation to use it in alien service. Guardianship is itself a service, since it preserves for others their property, which preservation is, indeed, a very necessary part of the general service due. Hence my rights are to be watchfully and zealously guarded. The property in my hands must be carefully protected, to prevent any trespass. My personal liberty must be maintained free from unwarranted interference.[3] My bodily welfare, and especially my life must be courageously defended against hurtful and deadly violence. The powerful instinct of self-preservation indicates the sacred duty of self-defense, and the original

[1] "Talent, a weight or sum of money, natural gift or ability, inclination. Fr. from Lat. from Grk. See Trench, *Study of Words*. We derive the sense of ability from the parable in Matthew xxv [*cf.* Luke 19 : 11–27], our talents being gifts of God." — Skeat.

[2] The pernicious vice of betting or gambling in any of its many forms is sufficiently condemned by the fact that it is a misuse of trust funds. Money is transferred without equivalent, and while the winner takes something for nothing, which is clearly akin to theft, the loser abandons his charge, whereby somebody other than himself, somebody to whom his service is due, suffers a loss, a wrong, a trespass. See *supra*, § 39.

[3] "Le premier des biens est la liberté. Le plus saint des devoirs de l'homme est de la conserver." — Dumas.

impulse of natural affection shows the no less sacred duty of defending the lives intrusted to our care. Violence must be repelled, if need be, by counter violence. But defense should not be allowed to pass over, as it strongly tends to do, into mere vengeance. The impulse to revenge is a malevolent desire, and hence abnormal, and hence unjustifiable. Yet retaliation is sometimes the best and indeed the only means of effective defense, in which case it is duty.[1]

§ 86. We can imagine a life conducted throughout according to the principles thus far expounded. One might conceivably be governed, in general and in particular, by a sense of duty, duty being here taken in the limited meaning of outward obedience to the law of trespass, justice and service, inspired by respect for the law, recognized as demanding that much but no more. The whole life being one of innocence and beneficence, duty is said to be perfectly fulfilled by this external conformity to the law simply out of respect for the law, a profound reverence for all pervading moral obligation, and this alone is what should determine all human conduct.[2]

[1] See *supra*, § 40; and *infra*, § 136 *sq.*, where an application of this doctrine of defense shows more fully its great importance. But let it be observed here that defense is the *sole* warrant for interference in another's liberty. In a profound and wide sense I am my brother's keeper, and must defend him from the trespass of others, which is a warrant for my interference in their liberty. Conversely, I am bound to defend them from him in case he attempts doing a wrong, and thus have a warrant for my interference in his liberty. See *supra*, § 32.

[2] Such is the doctrine of Kant. He says: "Duty is the necessity of acting from respect for the law. I may have inclination for an object as the effect of my proposed action, but I cannot have respect for it. . . . Now an action done from duty must wholly exclude the influence of inclination, and with it every object of the will, so that nothing remains which can determine the will except objectively the law, and subjectively pure respect for this practical law, and consequently the maxim to follow this law even to the thwarting of all my inclinations." — *Grundlegung*, u. s. w.; Auflage der R. and S., Seite 20; Abbott's trans., pp. 22, 23. The implication is that

The rigorism of this stoical doctrine is impressive and imposing. It is a severe and noble conception of duty, a high ideal. But observe, it does not merely disregard the affections; it requires their suppression. If we judge a man to be governed in all his conduct by a sense of duty, fulfilling carefully, anxiously, assiduously his many obligations, living a life of sacrificial service, purely because of respect for the law of duty, we are filled with admiration for so lofty a character; but if we judge him at the same time destitute of love, we admire him as we admire an iceberg. There is an instinctive repugnance to a person human, yet not humane. And if we find he has laboriously extinguished the yearnings of natural affection in favor of an overruling and exclusive conception of absolute duty, we turn from him as from a monstrous and repulsive prodigy.

The sense of duty, rising high but stopping with good works, fails to fulfill the law's demands. In the moral ideal of humanity, there is something higher than this rigid stoicism.[1] Were I sick and suffering, and did my friend serve

love is not a duty; for this conception of obligation excludes all personal inclination, teaching that an action determined by love alone is not a moral action, and that one wherein love mingles with duty is morally impure, being contaminated by inclination.

[1] The poets sometimes rise above the philosophers. Lowell, in *The Vision of Sir Launfal*, tells of the knight going to search for the Holy Grail, who, as he rode out of his castle's gate, saw a leper awaiting alms. Not moved with compassion (Mark, 1: 41), but with loathing, he tossed him a piece of gold, and without a word, rode on.

> "The leper raised not the gold from the dust;
> 'Better to me the poor man's crust,
> Better the blessing of the poor,
> Though I turn me empty from his door.'
> That is no true alms which the hand can hold;
> He gives nothing but worthless gold
> Who gives from a sense of duty.
>
> The Holy Supper is kept indeed
> In whatso we share with another's need;
> Not what we give, but what we share,
> For the gift without the giver is bare."

me merely from a sense of duty, I should be displeased, I would tell him to begone, I will hire a nurse. Is it sufficient for a father to guard and promote the welfare of his child simply out of respect for his rational obligation? Shall a mother tend her babe with all the wonderful, beautiful solicitude and ready self-sacrifice that win our adoration, merely because she knows she ought so to do? No, there is a higher, nobler impulse, maternal love. Should a husband and wife serve each other merely from a sense of duty, it would be a just cause of dissatisfaction, and perhaps of disunion. The conception of duty, enlarged beyond innocence to include beneficence, comes short of obligation. If it be thus limited, then it is legality, not morality, and again there is something higher than duty, something nobler than service. We heartily reject a scheme of ethics implying that a man is under no obligation to love his mother or his country, but should purify his character by eliminating all such inclinations; a scheme that clearly, distinctly enacts: Thou shalt not love thy neighbor.

CHAPTER XI

CHARITY

§ 87. An argument already offered, having its basis in the general principle that the natural or constitutional powers of man ought to fulfill their normal functions, or, more specifically, that every one has a right to gratify his normal desires, a right being a duty, concludes the appetites and appetencies to be auxiliary to the affections, which are thus normally supreme.[1] From this it was directly inferred that self cannot rightly be an end. With equal cogency it is implied that the object of affection is the normal and rightful end of all endeavor. In other words, the affections, included under the general name love, are obligatory; they ought, in due manner and measure, to be gratified. The moral law, found in the original and innermost nature of man, enjoins that he love his fellow man.

Consider the meaning of affection, love, charity, benevolence, these terms being taken synonymously. Love is a desire, an impulse or inclination toward others, disposing one to give out from his own resources what may benefit them. Let it be kept clearly in mind that love is strictly a desire. It should not be confused with volition, though the synonym, benevolence, partakes, etymologically, of the volition; for love is simply the causative antecedent of the volitional endeavor.[2] It is not a feeling, though attended

[1] See *supra*, §§ 78, 79.

[2] Benevolence, from Lat. *bene*, well, and *volens*, wishing, willing. Beneficence, from *bene*, and *faciens*, doing. Endeavor, from Fr. *en*, in, and

by peculiar feelings; being neither an emotion, though the name is commonly applied to its attendant emotions; nor a sentiment, though the sentiments that normally accompany it act and react powerfully to stimulate the desire. Love is properly and definitely a desire, relative to a sentient object, whose welfare it would promote.[1]

§ 88. Ye have heard that it hath been said by them of high authority, Love cannot be commanded, for it is an affection, and not a volition which alone is subject to command.[2] But love, benevolence, charity, pathological love,

devoir, duty, Charity, love; from Lat. *caritatem*, acc. of *caritas*, dearness, from *carus*, dear; *cf.*, cherish, caress. We use the beautiful word charity, ἀγάπη, in this wide sense which is imbedded in our early literature, not approving the reduction to almsgiving and like external acts, which it has suffered in common speech. The Revisers of The English New Testament unfortunately make the concession, and in 1 *Corinthians*, xiii, replace it by love, which term, besides marring the rhythm, is quite as ambiguous in usage, and as liable to be misunderstood. The words chastity and virtue have suffered a like reduction to a certain narrow and less delicate sense; see *supra*, § 70, note.

[1] The so-called love of complacency especially should be distinguished from the love of benevolence. Complacency is the quiet, pleasurable feeling that arises on contemplating with approbation the character or conduct of another. It hardly differs from the feeling of approbation, and as one may have self-approbation, so also he may be self-complacent. Complacency is strictly a feeling, a sentiment, and not a desire, and it is a misnomer to call it love. The love of benevolence alone is love. Hence it is quite possible to love one whose character and conduct are abhorrent. Jesus loved both Judas and John, but his love of John was mingled with and strengthened by complacency.

[2] "Love, as an affection, cannot be commanded, but beneficence for duty's sake; even though we are not impelled to it by any inclination, nay, are even repelled by a natural and unconquerable aversion. This is practical love [*i.e.* service], and not pathological [*i.e.* affection], a love which is seated in the will, and not in the propensions of sense, in principles of action, and not of tender sympathy; and it is this love alone which can be commanded. It is in this manner, undoubtedly, that we are to understand those passages of Scripture in which we are commanded to love our neighbor, even our enemy." — KANT, *Grundlegung*, S. 19; Abbott's trans., p. 21. See

as distinguished from practical love which is not properly love but willing service, can be commanded; though truly it is an affection, becoming active only as the subject is affected by an amiable object, that is, an object susceptible of welfare. For, although every command is primarily addressed to the will, yet the will, having, by means of voluntary attention, indirect control of all the mental faculties, carries out the command, if not thwarted by passion, in impressing its subordinates into the required order. Otherwise the subjective springs of conduct could have no moral quality. Even belief, a feeling of assurance, of conviction, is commanded in the presence of truth; and the command is obeyed, and the feeling is induced, by giving attention, sincere heed, to the presented truth.[1] Love, charity, a desire for another's welfare, may likewise be commanded in the presence of amiability, and the command obeyed, the affection induced, by giving like heed to the amiable capacity of the object. Hence the love of benevolence can be commanded, since it can be voluntarily induced, nourished and invigorated.

Not only can this love be commanded, but it is commanded. The moral law is embedded in and arises from the very constitution of human nature. Desires awakened by objects and guided by intelligence are the motives of voluntary conduct. We have seen that among these the affections are normally supreme, rightly subjecting all other motive impulses to their ends. Therefore we find that, in order to

in *Luke*, 6: 27-38, where this "practical love" specifically is commanded. Elsewhere Kant says: "Love to God, considered as an inclination (pathological love), is impossible, for he is not an object of the senses. The same affection toward men is possible no doubt, but cannot be commanded, for it is not in the power of any man to love anyone at command; therefore it is only practical love that is meant in that pith of all laws, Love God above everything, and thy neighbor as thyself." — *Kritik der praktischen Vernunft*, Auflage der R. und S., Seite 210; Abbott's trans., p. 250.

[1] See *Supra*, § 60.

fulfill their natural functions, the affections must have not merely free but preëminent exercise, and that this is essentially the supreme law of humanity demanding reverent obedience.

§ 89. The affections having different objects, have received various names; as, conjugal, parental, filial and fraternal love, friendship, kindness, patriotism, philanthropy. In each of these the affection varies both in kind and degree. The differences in kind are due to differences in the relations. The differences in degree are regulated by the possibilities. We are not bound to love all others equally, this being unnatural. Many ties, many obligations. Those most nearly related are bound to love each other with a special ardor; as, parents and children.

The sentiment of gratitude excites love for a benefactor or neighbor. It enters largely along with friendship and kindness into the forms and substance of true politeness, which is love in littles, and in all its grades is essential to high moral culture, and is ennobling.[1]

We are bound to love those whose character and conduct

[1] Friendship is discussed by Aristotle at length in *Nic. Eth.* bks. viii and ix. On gratitude, see *Elements of Psychology*, § 254. The royal law, Thou shalt love thy neighbor as thyself, suggested the reasonable question, Who is my neighbor? Luke, 10: 25 *sq.* The answer, in the parable, is, The Samaritan was neighbor to the wounded man, because he showed mercy on him. Hence the wounded man was bound to love the Samaritan as himself. This is the obligation of gratitude to a benefactor. The parable does not, as commonly supposed, teach philanthropy, but gratitude, and the love that would requite benefaction. My benefactor is my neighbor, come he from the far east or west, from a despised race or a hostile camp, and I am told to love him as myself. The added injunction, Go and do thou likewise, is philanthropic in tone, but it is no part of the parable, no part of the answer. There is no Scripture commanding us to love everybody as in fact we love ourselves. The new commandment, John, 13: 34, is to a special class, and sets up a higher and purer standard. See *supra*, § 74, note, and § 48, note.

we abhor, cherishing the desire to remedy the evil in them, and otherwise to better them. We should love even a wicked and active enemy; righteous defensive resentment being quite consistent with the impulse to promote, not his evil way, but his well-being whenever opportunity offers or can be found, and in so far as we do not thereby trespass on some other. In civilized warfare after a victory the wounded abandoned by the defeated are cared for humanely. This is love to enemies; we feel the obligation, and call it humanity.

We are bound to love all men of all races, those in the remotest regions of the globe, our very antipodes, yes, and even the generation yet unborn, in a due manner and measure. This is the obligation of philanthropy.[1]

§ 90. Service fulfilling the law must be, not merely willing service, but loving service. We have seen that a life of sacrificial service, of active beneficence, determined only by respect for the law, fails of completeness.[2] Though I bestow all my goods to feed the poor, and have not charity, it profiteth me nothing. It is essential to duty that love be its spring. The service due is loving service. Let the duplex form of this phrase be noted. Loving is desiring, a subjective motive; it is benevolence, well-wishing. Service is acting, an objective motion; it is beneficence, well-doing. Serving is the normal outcome, the natural consequent, of loving; they are psychological correlatives. Neither is complete without the other.

For, how is it possible that one should sincerely, willingly, intentionally endeavor to promote another's welfare, unless

[1] "Friends, parents, neighbors, first it will embrace,
Our country next, and next all human race.
Wide and more wide, th' o'erflowing of the mind
Takes every creature in of every kind.
Earth smiles around, in boundless beauty dressed,
And heaven reflects its image in her breast."— POPE.

[2] See *supra*, § 86.

he desire the other's welfare? All voluntary effort is conditioned on an antecedent desire, so that the command of intelligent, willing service is a command of intelligent, loving service. One cannot sincerely strive for another's welfare unless he desire it, and this is love. If it be said, the desire is simply to obey, we reply, a desire to obey a command to serve, is a desire to serve as commanded.

On the other hand, how can there be love not followed by service? As faith without works is dead, so also is love without service. If it have any life, it is at least ready and watchful of opportunity to serve. For generous love impels to service. He who loves will serve, will render willing, active, self-sacrificing service. Also he who loves will be just, will pay all dues, will not trespass. Bear ye one another's burdens, and so fulfill the law. Owe no man anything, save to love one another, this being the only debt that cannot be finally discharged; for he that loveth another hath fulfilled the law. Love is the fulfillment of the law.[1]

All the various presentations of the moral law heretofore considered, we now find to be summed in the law of loving service, Thou shalt love and serve. And indeed we see that even herein is superfluity, for the whole moral law, the total of human obligation, is completely and comprehensively

[1] See *Galatians*, 6 : 2; *Romans*, 13 : 8, 10. Love is natural, normal; hate, unnatural, abnormal. "It is to the credit of human nature, that, except where its selfishness is brought into play, it loves more readily than it hates. Hatred, by a gradual and quiet process, will even be transformed into love, unless the change be impeded by a continually new irritation of the original feeling of hostility." — HAWTHORNE, *Scarlet Letter*, ch. 13.

"Das Gesetz der Liebe soll walten, und was das Naturgesetz in den Dingen, das ist das Sittengesetz und das Recht im Menschen." — AUERBACH, *Auf der Höhe*.

> "First of all was Chaos; next in order,
> Earth with her spacious bosom; then
> Love, who is preëminent among the Immortals."
> — HESIOD, as quoted by Aristotle in *Metaphysics*, bk. i, ch. 4.

summed in the single categorical imperative of one syllable, love. Thou shalt love, is the perfect law, the law of love.[1]

§ 91. Progress in moral culture consists in transforming fear into respect, and respect into love. With primitive characters, and even with many highly cultured otherwise, the fear of penalty is the chief, often the only, motive of obedience. To this may be added as one step higher, the hope of reward. In this is an appeal to the selfish propensities usually predominant in crude humanity. They are not thereby approved, but used to bring the man to at least outward obedience, a step toward inward culture. Thus the law is a pedagogue, leading men upward.[2]

A thoughtful consideration of one's relations, a clear recognition of the law in us, inspires respect for its mandate, and an impulse to observance. Herein is a passing away from the influence of threats and promises. These are lost to

[1] "General benevolence is the great law of the whole moral creation." — BUTLER, *Sermon* viii.

> "O high imperative, how dost thou impend
> Over our guilty consciences, that know
> And yet ignore, fear yet transgress, admire
> As best, and yet pursue the way that's worse!
> What statesman, or what scholar, or what man
> Is there who knows not that this law, if kept,
> Would work man's perfect weal; who doth not know
> That man was made to keep the law of love,
> And keeps it not; that love sums all his duty,
> All his need; and, did it once prevail,
> Love would ensure all right, include all virtue,
> Compel obedience to each lower law,
> Perfect man's being and fulfill his end?"
>
> — HENRY W. RANKIN, *The Law of Love.*

"The law ordained, Thou shalt love, and love ordained that law. Man could not keep it. Then love ordained the gospel, God so loved. Thus, Thou shalt love, is the whole of The Law; and, God so loved, is the whole of The Gospel. This is so clear, that it is at once Law and Gospel for children and for savages; and yet it is so deep in its limpid clearness that no philosopher can fathom it."— DUNCAN, *Colloquia Peripatetica.*

[2] See *Galatians*, 3 : 24, 25; 2 *Corinthians*, 5 : 11; and *cf. supra*, § 52, last paragraph.

sight, and obedience is determined simply by respect for the law.[1] The vast all-pervading sense of moral obligation, a wide comprehensive view of duty, an obedience to the law for its own sake superior to its sanctions, produce nobility and excellence in moral character. Yet this ideal is cold, hard, stern, repressing as weakness the natural play of tender sympathy, of generous sentiment, of warm inclination toward others, maintaining a stoical indifference to their weal or woe, and giving help exclusively out of respect for the law of service. As a scheme of morals, this cannot be purged of egoism, of selfishness; for necessarily it holds that the so-called duties to self are equally or even more imperative than duties to another, those being the basis from which all other duties arise.[2]

In the still higher ideal, cold respect for law is gradually, as culture progresses, replaced by charity, which is the bond of perfectness. As in the second grade the sanctions of the law are lost to sight, so in this highest grade the law itself disappears from view, and its requirements are fulfilled without reference to its mandate. It is the fruit of moral growth that both subjective and objective activities accord with the law, not because of its pressure, but because the order and harmony of the natural powers have been restored, and the man does what is right because his dominant impulses lead thereto, and his free preference finds therein his highest gratification. He renders loving service in due meas-

[1] "It argues a low degree of insight into the nature and dignity of man," says Froebel, "if the incentive of reward in a future world is supposed to be needed in order to insure a conduct worthy of his nature and destiny. If the human being is enabled at an early period to live in accordance with genuine humanity, he can and should at all times appreciate the dignity of his being; and at all times the consciousness of having lived worthily and in accordance with the requirements of his being, should be his highest reward, needing no addition of external recompense." — *Education of Man*, § 88.

[2] See *supra*, § 75, note; and § 86.

ure to his fellow men, this having become the habit, the second nature of his being. He does by nature the things of the law, and having no law, is a law unto himself, showing the work of the law written in his heart. For love knows no law other than its own impulse.[1]

Obviously, in the economy of human nature, this progression does not take place uniformly. A criminal at war with society at large may be dutiful to his family in other matters because of strong domestic affection, and in so far fulfill the law of love. The average good citizen knows little and cares less about the criminal code. Its enactments are not for him. He has not the slightest disposition to do what it forbids, and orders his actions without reference to it. The penitentiary, the jail, the gallows, have no terrors for him. The police, the courts, the judiciary, he recognizes as social machinery devised and maintained for the protection of his rights. They have no other meaning for him. He has risen above the great body of civil law, and is not, properly speaking, an obedient, but a law-abiding citizen who, without

[1] See *Colossians*, 3 : 14; 1 *John*, 4 : 18. See the progress as stated in 2 *Peter*, 1 : 5–7. "He who does good with inclination, and with love to his neighbor, stands on a higher plane than he who is doing it with a constant victory over himself."— STAHL, *Rechts- und Staats-Lehre*, i, 158. "Sympathy, fellowship in the needs of others, philanthropy, is the source from which flows everything that Ethics prescribes under the name of duties of virtue and love. It is the source of all actions which have moral value, the sole genuine moral motive, and the firmest and surest pledge of moral deportment." — SCHOPENHAUER, *Grund-Probleme*, 133.

It is curious to note that the words of St Paul, in *Romans*, 2 : 14, οὗτοι νόμον μὴ ἔχοντες ἑαυτοῖς εἰσιν νόμος, these, not having a law, are a law unto themselves, have a counterpart in Aristotle's *Ethics*, bk. iv, ch. 8, §10, ὁ δὴ χαρίεις καὶ ἐλευθέριος ὄυτως ἕξει, οἷον νόμος ὢν ἑαυτῷ, the refined and free-spirited will behave, as being a law unto himself. Again in *Galatians*, 5 : 23, we find : κατὰ τῶν τοιούτων οὐκ ἔστιν νόμος, against such there is no law ; and in Aristotle's *Politica*, bk. iii, ch. 13, we have : κατὰ δὲ τῶν τοιούτων οὐκ ἔστι νόμος · αὐτοὶ γάρ εἰσι νόμος, against such there is no law ; for they themselves are a law.

thought of the law, governs his conduct by his own cultured preferences. In his intercourse with friends and acquaintances, he may still have duties that are irksome and repugnant which he fulfills from a sense of duty, and therein feels the tense bonds of obligation. His further moral growth requires the enlarging and deepening of charitable sympathies, so that his conduct may be determined more and more by love, less and less by law; doing always the right thing, not because he ought so to do, but because he wants to do just that thing rather than any other.

§ 92. We have seen that so long as one acts merely from respect for the law, he is in bondage to the law.[1] He has passed perhaps with many a fierce struggle out from a degrading slavery to appetites and passions and unbridled lusts, for of what a man is overcome of the same is he also brought into bondage, into a voluntary and honorable bondage. His conduct becomes uniform, reduced to the order of facts that ought to be, regulated by principles conforming to moral law. This is a dignified attitude, a high and rare attainment. But the man is in bonds, rigid, inexorable, though honorable, bound under a law that knows no concession or relaxation. By many moralists this is called liberty. Surely it is not liberty, but strict, the strictest, bondage. It is moral necessity. Regulus said: I must return. Luther cried: I can do no otherwise. Where, then, is liberty, the perfect liberty for which man so ardently longs?[2]

Evidently when one does more and more as the law requires, not by virtue of the obligation, but by virtue of his own native or cultured disposition, he is passing from

[1] In § 72, *supra; cf.* § 86.

[2] See 2 *Peter*, 2 :19. For the several kinds of necessity, see *supra*, § 44, note. Christians are servants, bond-servants, slaves, δοῦλοι. They are no longer their own; they are bought with a price. See *Romans*, 6 : 16–22; 1 *Corinthians*, 7: 21–23; *Luke*, 2 : 29.

under bondage into the realm of liberty. When love takes the place of constraining duty, the law ceases to be law. Then he is no longer under law, but under grace; then, but not till then, is he perfectly free. The law commands, Thou shalt love; and when through obedience love has become the dominating impulse, confirmed and established, the law as law has disappeared. Thus perfect love is perfect liberty.[1] Then all doing is righteous yet free, since it is done in free preference to any other. Here and here only is the longed for liberty to be found. In our imperfection and struggles with self, which never cease, this highest ideal is never fully realized in human life. The imperfect person is one conscious of obligation. The perfect person is one conscious of holiness. Perfect persons are not under law; so that we may truly say the holy angels and the Deity are under no obligation to do what they do, but being perfect in love, are perfect in work, and perfect in liberty. Heaven knows no law.

[1] Love and liberty grow out of the same root in the reality of their meaning, as in the origin of the words which express it; both arising from the Teutonic base *Lub.*

The view presented is in accord with the *true* doctrine of antinomianism, or Christian liberty. See *John*, 8 : 32; 15 : 12–15; *Galatians*, 5 : 1, 13, 14; *James*, 1: 25.

CHAPTER XII

WELFARE

§ 93. The term welfare has been used in the foregoing discussion. The corresponding notion is of so great importance in ethical theory as to require special examination.

Many philosophers, both ancient and modern, hold that the total essence of well-being or welfare or happiness is pleasure. All activity, they say, resolves ultimately into seeking for pleasure and shrinking from pain, this being a necessary consequence of the original constitution of the animal man, fully explaining all his conduct, and determining his character in its highest development. The maximum of pleasure attained throughout life is the maximum of welfare. Pleasures are admitted to vary in quantity, and even in quality, the coarse enjoyment of brutal sensuality differing widely from the refined enjoyment of delicate sentiment. Originally, according to the hypothesis of evolution, all impulsion is brutally selfish; gradually it becomes polished by its environment, but with no change of substance. The doctrine is essentially egoistic. Benevolence, in its most generous forms, is explained by the pleasure it gives the benefactor, and a purely disinterested action is pronounced a psychological impossibility.[1]

[1] Bentham begins his treatise on "The Principles of Morals and Legislation" as follows: "Nature has placed man under the governance of two sovereign masters, *pain* and *pleasure*. It is for them alone to point out what we ought to do, as well as to determine what we shall do. On the one hand the standard of right and wrong, on the other the chain of causes and effects, are fastened to their throne. They govern us in all we do, in all we say, in

Without renewing the objections to egoism, let it be here observed that pleasure and pain are qualities belonging to feeling only. They are not elements of desire or of its gratification, though indeed they accompany both. We often seek to gratify a desire utterly regardless of the attendant pleasure or pain, and hence these are not universal ends.[1] Moreover, pleasure and pain have in themselves no moral quality, they are neither right nor wrong. But if pleasure were the ultimate end of human endeavor, then it were ethical in the highest degree, and the maximum of pleasure attained would be the maximum of virtue; which is absurd.[2]

It is freely admitted that there is a natural and hence universal desire for pleasure and aversion to pain, the reverse being psychologically impossible. But pleasure as an object of desire is only one among a large number of appetences, and it is not the chiefest or strongest or most prevailing, for there are others that often override it. Now it is evident that the gratification of one normal desire among many that are coördinate cannot constitute entire well-being; for to this end there must be a measured, harmonized gratification of all native inclinations. Nor can desire for pleasure be, even obscurely, the constantly informing element of the other desires; for very often we desire and ardently pursue, not pain itself, but what we know to be painful; we take pains to reach a painful end, bitterly demanding satisfaction,

all we think; every effort we can make to throw off our subjection, will serve but to demonstrate and confirm it. The *principle of utility* recognizes this subjection, and assumes it for the foundation of that system, the object of which is to rear the fabric of felicity by the hands of reason and of law." *Cf.* J. S. Mill's treatise on *Utilitarianism*.

[1] See *Elements of Psychology*, §§ 228, 256; and *supra*, § 5.

[2] "The principle of private felicity," says Kant, "which some make the supreme principle of morality, would be expressed thus: Love thyself above everything, and God and thy neighbor for thine own sake." —*Kritik der praktischen Vernunft*, S. 210, note.

and heartily accepting the poignant consequences. Hence pleasure, even should it be at a continuous maximum throughout life, cannot of itself be accounted welfare, though indeed in complete welfare it is an ever-present and important factor.[1]

Of course one may define welfare as a maximum of pleasure and discuss it accordingly; but it is very certain that this is not the notion of welfare that prevails among men. No doubt the notion includes pleasure, but it includes much more; for men condemn, as lacking dignity, a life whose sole aim is pleasure however refined. Who enjoys more delightful pleasure, according to De Quincey, than the opium-eater? Despite his delicious dreaming, he is judged a most pitiful wretch. Even he who devotes himself to giving pleasure to others, as the professional musician, is held in slight esteem. So also the comedian. Men enjoy laughing, but the perpetually funny man is classed with the circus clown, a lineal descendant of the court jester, whose rank was low, and whose quips were regulated with whips. Still the pleasure giver has a calling, for pleasant recreation

[1] "The true object of the original vital instinct in man is not pleasure, but self-conservation. Such was the doctrine of Chrysippus, the Stoic. Pleasure, said he, is the natural result, *ἐπιγέννημα*' of successful effort to secure what is in harmony with our nature. It follows upon activity, but should never be made the end of human endeavor." — UEBERWEG, *Hist. Phil.*, § 55. "If happiness means the absence of care and the inexperience of painful emotion," says Froude, "then the best securities for it are a hard heart and a good digestion." Carlyle dubbed this view of happiness "the pig philosophy," and also says: "Man's unhappiness, as I construe, comes of his Greatness; it is because there is an Infinite in him, which with all his cunning, he cannot quite bury under the Finite. Will the whole Finance Ministers and Upholsterers and Confectioners undertake, in joint stock company, to make one Shoeblack HAPPY? They cannot accomplish it, above an hour or two; for the Shoeblack also has a soul quite other than his stomach; and would require, if you consider it, for his permanent satisfaction and saturation, simply this allotment, no more, and no less: *God's infinite universe altogether to himself*, therein to enjoy infinitely, and fill every wish as fast as it rose." — *Sartor Resartus*, bk. ii, ch. 9.

is needful to our welfare. But the mere pleasure seeker, studying his own enjoyment, not occasionally as a recreation but as the end of living, the devotee of social amenities, the professional sportsman, the dissipated spendthrift, the dissolute libertine, each of these is even more justly reprobated, hardly for lack of wisdom in his way, rather for total lack of wisdom's way. A life of pleasure, whether generous or selfish, even one of simple playful gayety apart from vice, is accounted a wasted life, and wise men take infinite pains to secure, through much self-denial, a regulated and sober welfare.

§ 94. We are, then, in great need to know, clearly and distinctly, the meaning of welfare. In accord with the fundamental doctrine of this treatise, the following definition is proposed: Welfare is the gratification of normal desire. From this it follows that continuous welfare is the constant gratification of normal desires throughout a complete life. Its attainment calls for self-control, for a measured adjustment of incompatible gratifications, in order to harmony, and to the maximum gratification of those desires that are natural, normal and in accord with moral law. The primary principle is, a man has a right to gratify his normal desires, if he do not trespass. Hence he has a right to welfare; but whether he will attain it or not depends on the intelligent regulation of his desires, together with the possibility of their gratification within the given limits.

It has been pointed out that, taken concretely, virtuous conduct is conduct conformed to practical reason or conscience, and, taken abstractly, virtue is action in conformity with moral law. Also it was observed that virtue implies a struggle against obstacles.[1] Now, besides the subjective difficulties of virtuous endeavor, the judging, choosing and

[1] See *supra*, § 70.

striving for right life, there are practically numerous and great objective difficulties, external obstacles in circumstances, that oppose one at every turn, preventing the complete gratification of virtuous longings. If the subjective intention and effort be accomplished, then, even though the objective result fail, the chief condition of welfare is fulfilled, and its principal element provided. But to complete welfare, there must be an external realization of the subjective virtuous intent. So it is that, in the actual warfare of life, though it chastens and strengthens, there is rarely, if ever, a complete realization of thorough-going welfare.[1]

Since we have defined welfare as the gratification of normal desires, and have characterized virtue as being the effort to realize this gratification in loving service, it appears that one's welfare comes from seeking disinterestedly to promote the welfare of others, and that an earnest constant striving to reach this end comprises the sum total of obligation. It is attained on two parallels. First, as a prime condition, one should seek, directly and indirectly, by precept, by example, and by whatever influence he may rightly use, to cultivate in his fellows a virtuous disposition, inducing generous impulses, and impressing the mandate, Go, and do thou likewise. Such education is due especially from parents to children, from teachers to pupils, from the enlightened civilizer to the benighted barbarian. Secondly, he should strive to remove, in so far as practicable, the external obstacles to their welfare lying in the way of his fellows, especially of those more nearly related to him; and also to furnish out of his own resources all reasonable facilities for these others to do likewise, thus helping them to modify and arrange their circumstances favorably to their own righteous

[1] Semita certe
Tranquillæ per virtutem patet unica vitæ."
— JUVENAL, lib. iv, sat. 10.

ends. So doing, he shall himself, without thought of himself, experience the working of that great natural law of human activity, It is more blessed to give than to receive.[1]

§ 95. It is now needful to inquire concerning happiness, of which nothing has heretofore been said. The term is very indefinite, and though in common use, there is difficulty in fixing its meaning.[2] Sometimes we hear that happiness is continuous pleasure. If this be allowed, then happiness cannot be identified with welfare; for, as we have seen, welfare is something more than pleasure. But, while pleasure is a large, and perhaps an essential ingredient in happiness, this also seems to have other elements.[3] Then shall not happiness and welfare be identified? Not strictly; for, though surely there is an intimate connection between them, a distinction remains. It is the distinction of antecedent and consequent in causal relation. Welfare consists in the constant gratification of right desires. Now, like as pleasure is the reflex or correlate of spontaneous and unimpeded

[1] "Remember the words of the Lord Jesus, how he himself said: *Μακάριόν ἐστιν μᾶλλον διδόναι ἢ λαμβάνειν.*"—*Acts*, 20: 35. Words not found elsewhere.

[2] Happy, from *hap*, a word of Scandinavian origin, meaning fortune, chance, accident; seen in hap-hazard, hapless, haply, happen, perhaps, and mishap; *cf*. Ger. *Glück*, luck, and *Glückselig*, blissful; Fr. *bonheur*, from *bon*, and *heur*, luck; Lat. *felix*, from which, felicity; Grk. *εὐτυχία*, good-hap, and *εὐδαιμονία*, a good *δαίμων*, genius, fate, destiny, fortune, providence. "Happiness," says Coleridge, "is not, I think, the most appropriate term for a state, the perfection of which consists in the exclusion of all hap, that is, chance." — *Aids to Reflection*, i, p. 31.

[3] "We can only have the highest happiness," says George Eliot, in her epilogue to *Romola*, "by having wide thoughts, and much feeling for the rest of the world as well as for ourselves; and this sort of happiness often brings so much pain with it that we can tell it from pain only by its being what we would choose before everything else, because our souls see it is good." "We think," says Aristotle, "that pleasure should be mixed up, *παραμεμίχθαι*, with happiness." — *Nic. Eth.*, x, 7, 3. Yet it hath been said, Blessed are they that mourn.

energy exerted in any special case, so, in the general course of living, happiness is the reflex or correlate of virtuous and successful conduct. Thus welfare is antecedent, well-being consequent; the one is dynamic, the other static; the one, prosperity, the other, happiness.[1]

There can be no doubt that happiness is universally regarded as desirable in the highest degree. Whence it may be presumed that the desire for happiness is a subjective necessity, an established uniformity, a natural law in humanity. Also it may be allowed that no man can forecast the particular circumstances that would make him happy.[2] Yet it seems not impossible for practical ethics to lay down rules of conduct in accord with fundamental principles, which, if

1 "Oh happiness! our being's end and aim,
Good, Pleasure, Ease, Content, what'er thy name,
That something still which prompts the eternal sigh,
For which we bear to live, or dare to die;
Which, still so near us, yet beyond us lies,
O'erlooked, seen double, by the fool and wise;
Plant of celestial seed, if dropped below,
Say in what mortal soil thou deign'st to grow.
Where grows? Where grows it not? If vain our toil;
We ought to blame the culture, not the soil.
Ask of the learn'd the way? The learn'd are blind;
This bids to serve, and that to shun mankind;
Some place the bliss in action, some in ease,
Those call it pleasure, and contentment these;
Some, sunk to beasts, find pleasure end in pain,
Some, swelled to gods, confess e'en virtue vain;
Or indolent, to each extreme they fall,
To trust in everything, or doubt of all."
—POPE, *Essay on Man.*

"There is one end," says Kant, "which may be assumed to be actually such to all rational beings, and therefore one purpose which they not merely may have, but which we may with certainty assume that they all actually have by a natural necessity, and this is happiness. To be happy is a purpose which we may presuppose with certainty and *à priori* in every man, because it belongs to his being. . . . The notion of happiness is so indefinite that although every man wishes to attain it, yet he never can say definitely and consistently what it is that he really wishes and wills. He is unable, on any principle, to determine with certainty what would make him truly happy, because to do so he would have need to be omniscient." — Excerpts from *Grundlegung, u. s. w.*, S. 39–43; Abbott's trans. p. 46 *sq.*

favored by environment and followed intelligently and persistently, should conduce to happiness. But only a brief theoretical consideration is herein admissible.

It appears, then, there are in general two necessary conditions of welfare and its consequent happiness, subjective observance of moral law, and objective environment favoring realization. The former is necessary, but insufficient. The inward satisfaction arising from a full discharge of obligation, is an essential and the chief element of happiness; but untoward circumstances may so mar the felicity of a righteous worker that we deem him stricken, smitten of God, and afflicted. The most perfect man was a man of sorrows, suffering the contradiction of sinners against himself. On the other hand, the full possession of health, wealth and honors does not in itself constitute welfare. Outward success only, like that of Alexander, what doth it profit a man? There must be prosperity both within and without in order to welfare, and to its reflex, happiness.

Also we observe that no one can hopefully make happiness, however much he may desire it, his immediate object. It is altogether out of direct reach. The only possible way to it is through its condition, welfare. Hence wisdom disregards happiness as an end, not looking beyond welfare, but seeking this as the end of all endeavor. This attained, happiness results by a benign law of human nature; well-being, the sanction of well-doing. A poet has said: Happiness is a wayside flower; plucked, it withers in the hand; passed by, it is fragrance to the spirit.

Moreover, let it be especially observed that, still less can any one hopefully make his own personal happiness his end. It has been sufficiently shown that, one's own welfare depends on his seeking the welfare of others. Hence one's own happiness is found only in thus promoting that of others. Outward duty done for the sake of inward satisfac-

tion, fails as duty and as satisfaction. The mother, who with much self-denial waits upon her sick babe merely because, should the babe die from neglect, she could never forgive herself and would suffer the pangs of remorse, that mother is an egoist, and not the mother we adore. She may escape the pain, yet is unhappy, for this is not the outcome of maternal love. Self-seeking in any form is foredoomed to failure, for it lacks the perfect virtue which, forgetful of self, strives for the welfare of others. Living for one's own happiness is living for one's self; and living for one's self is sure to be a failure. Living for loving service is living for others; and living for others is the sure and only road to welfare, both theirs and ours, that welfare whose correlate is happiness, both theirs and ours.[1]

[1] Aristotle's eudemonistic theory makes happiness, *εὐδαιμονία*, the highest good and ultimate end of human endeavor. He holds that happiness depends on the rational or virtuous activity of the soul continuously exercised, defining it to be the energy of the soul according to the best virtue in a complete life, and saying that with normal activity pleasure is joined as its blossom and natural culmination. Yet he hardly distinguishes happiness from virtue, saying, in the *Politica*, vi, 9, 3, that it consists in an active exertion and perfected habit of virtue, *ἀρετῆς ἐνέργεια καὶ χρῆσίς τις τέλειος*. Nowhere does he seem to have a conception of the higher demand of moral law, that dutiful service must be loving service. See Grote, *Aristotle* (Second Edition, 1880), ch. xiii, *Ethica*, for a critical examination of the doctrine.

The Stoics did not surpass the Stagirite. They taught that the end of man is to live agreeably to the natural constitution of man, *τέλος εἶναι τὸ ζῆν ἀκολούθως τῇ τοῦ ἀνθρώπου κατασκευῇ*. Self-conservation is virtue, and virtue is sufficient for happiness; not that it renders one insensible to pain, but because by it one rises superior to pain. — Seneca, *Epistola*, 9. See Ueberweg, *Hist. Phil.*, § 55. The doctrine of these cultured but heathen Greeks, which for many centuries exerted a powerful influence upon the European thought, has not a breath of the charity that suffereth long and is kind, and that never faileth.

Spinoza, with a like view of virtue, and no thought of charity, taught identity, saying, Virtue is happiness. His dictum is, *Beatitudo non est virtutis præmium, sed ipsa virtus.*

Kant teaches that "All the elements which belong to the notion of happiness are altogether empirical" (— trans. p. 49), and the hope to attain it

§ 96. Involved in the notion of welfare is the notion of good, a term so very ambiguous that its use has thus far been avoided. Good things are relatively or absolutely good. The relatively good are those not good in themselves, but only as a means to something beyond; as, riches. We seek them in order to attain those absolutely good, that is, such as are good in themselves, and not good for aught else; as, luxuries. What is good for something else has value; what is good in itself has worth. An end good in itself is an absolute end.[1]

Absolute ends are altogether subjective, found only in certain mental states of sentient beings, more especially of persons, who habitually seek some one end, and only occasionally others, as desirable. Ends vary in degrees of excellence, as good, better, best. The best, the highest aim of human activity, is termed the *summum bonum*.

The determination of the absolute, the ultimate good, the *summum bonum*, as the end of all moral endeavor, was the primal problem of ancient ethics.[2] The Hedonists found it in pleasure, the highest enjoyment of the present passing moment. The Epicureans also found it in pleasure, but posited the maximum of enjoyment extending throughout life, and called this happiness. Plato solved the problem grandly by declaring that the highest ultimate good is not

in any measure depends on our following the dictates, precepts or counsels, *consilia*, of prudence, the hypothetical imperative, quite distinct from the intuitive categorical imperative or moral law. See *supra*, § 44, note. This sets happiness entirely apart from morality. His fundamental doctrine that "Respect for the moral law is the only and undoubted moral motive" (— trans. p. 243), is fatally defective in this exclusion of all sanction, as well as in ignoring the very essence of duty, the love that perfects service, that at once consummates and dissolves obligation.

[1] See *supra*, § 40, note. Also Plato, *Republic*, bk. ii, p. 357. — Step.

[2] This method of procedure is criticised by Kant in the *Analytic of Pure Practical Reason;* see Abbott's trans., p. 219 *sq*. See also Sidgwick's *Methods of Ethics*, bk. i, ch. 9, and bk. iii, ch. 14.

pleasure, nor wealth, nor knowledge, nor power, but is the greatest possible likeness to God, as the absolutely good. He taught that happiness depends on the possession of this moral beauty and goodness.[1] Aristotle's ultimatum is happiness, but with a definition, already noted, that distinguishes it from pleasure, and is hardly exceptionable. The Stoics taught that the supreme end of life, the ultimate good, is virtue, that is, a life conformed to nature, the agreement of conduct with the all-regulating law of nature, the human with the divine will, whereby the sage combines in himself all the essential perfections of deity. We remark that each of these several doctrines is egoistic, finding the *summum bonum*, the ultimatum of moral endeavor, to be an attainment of the moral agent for and within himself.[2]

§ 97. In modern ethics investigation of the *summum bonum* is less prominent, and various and conflicting views are entertained.[3] The utilitarians teach the right aim and end to be happiness, which is variously and hazily defined. This doctrine divides into egoism and altruism, according as the agent regards his own happiness as the end of his endeavor, or makes that of related persons its object. If the good of a particular person, himself or some other or others, be the aim, it is called individualism; if the good of a community at large be the aim, it is called universalism, which has as many forms as there are kinds of community; for instance, social, national, or humanistic universalism. In

[1] See *Symposium*, pp. 202 *e*, 240 *e*; and *Gorgias*, p. 508 *b*, Step. *Cf. Matthew*, 5: 48.

[2] See Cicero, *De Finibus Bonorum et Malorum*; and Augustine, *De Summo Bono*. Also *supra*, § 25, note.

[3] On the matter of this section, which is necessarily very brief, see Martineau's *Types of Ethical Theory*, Sidgwick's *History of Ethics*, Külpe's *Introduction to Philosophy*, §§ 27–30, Janet's *Theory of Morals*, bk. i, chs. 3, 4, and Wundt's *Ethical Systems*.

seeking the good of a community the aim should be the greatest good of the greatest number.[1]

The dominant form of philosophical ethics at the present day seems to be evolutionism, which affirms that development, progress, prosperity, is the end of moral endeavor. According to Spencer, that is good, in the widest sense, which serves to accomplish some purpose; and the ultimate

[1] Bacon struck the keynote of utilitarianism when he made the common weal the end of moral endeavor. He was followed by Hobbes, Cumberland, Locke and Paley, and later by Bentham, Comte and J. S. Mill. Hutcheson, in his *Inquiry* (1725) p. 177, says: "That action is best which produces *the greatest happiness for the greatest number;* and that worst which in like manner occasions misery." The phrase here italicized has become famous, and is still the recognized principle of the utilitarians and humanitarians. Hutcheson anticipated Bentham, to whom the phrase is usually attributed, by at least three-fourths of a century. To it other schools object that happiness is indeterminable, and that what actions would reach the greatest number is even more indeterminable.

By utility is meant that property in any object whereby it tends to produce happiness, and the doctrine in morals is that an action which produces utility is a right action because utility produces happiness. See Bentham's *Principles of Morals and Legislation*, ch. 1, and J. S. Mill's *Utilitarianism.* To this it is objected that useful action can be known to be such only from observation extending over a vast range of facts through a vast period of time, which renders it impossible for any except the learned and wise to judge what is right, especially in any new combination of circumstances. See Wayland's *Moral Science*, p. 38 *sq.*; Grote's *Utilitarianism;* Lecky's *History of European Morals*, ch. 1.

Furthermore we object that an action proving useful does not make it right, which reverses the order of production, but can only logically show it to be right. The utility is *causa cognoscendi*, not *causa essendi*, of rightness. An action that conforms to the law, is right, regardless of consequences. When the application of the law to a case is obscure, we may forecast from experience the consequences, and if we regard these as tending to welfare, we may infer the action to be morally right; since we have already judged that all right action, and it only, has this tendency. Thus its consequences help us to know what action is right, but do not make it right. Let it be remarked that in the proposition, an action is right because it is useful, the word because is ambiguous and misleading. It may mean either efficiently producing cause, or logically informing cause, *i.e.*, a reason. The utility of an action is the latter only.

conscious purpose of all vital activity is the production or retention of pleasure, or the avoidance or removal of pain. According to Wundt there is a series of ethical ends, beginning with self-contentment and self-improvement, rising to social ends in public well-being and general progress, and terminating in humanistic ends, chiefly intellectual, which consist in the continuous improvement of mankind.[1]

In opposition to the foregoing empirical doctrines, is the extreme intuitionism of the Kantians, who make the absolute ethical end to lie in obedience, pure and simple, to the objective moral law.[2] Less extreme are the perfectionists, who make the supreme good to lie in excellence of moral character, which excellence they fail to define clearly, but hold that it is attained by the active exercise of the intellectual and sensitive nature under the presidency of reason.[3]

The present treatise teaches that the aim and end of life is the harmonious and complete development of humanity, individually, socially, politically and religiously, each one

[1] See Spencer's *Data of Ethics*, and Wundt's *The Facts of the Moral Life*. Also Williams's *A Review of the Systems of Ethics founded on the Theory of Evolution*, and Darwin's *Descent of Man*, ch. 3. See also *supra*, § 6 note ; § 20 ; and § 21, note.

[2] According to Kant, "Virtue is not the entire, complete good as an object of desire to reasonable, finite beings ; for, to have this character it should be accompanied by happiness, not as it appears to the interested eyes of our personality, which we conceive as an end of itself, but according to the impartial judgment of reason, which considers virtue in general, in the world, as an end in itself. Happiness and virtue, then, together constitute the possession of the sovereign good in an individual, but with this condition, that the happiness should be exactly *proportioned* to the morality, this constituting the value of the individual, and rendering him worthy of happiness. The sovereign good, consisting of these two elements, represents the entire or complete good, but virtue must be considered as the supreme good, because there can be no condition higher than virtue ; whilst happiness, which is unquestionably always agreeable to its possessor, is not of itself absolutely good, but supposes as a condition, a morally good conduct." —From Fleming's Vocabulary, *ad verb.*, p. 68.

[3] See Janet's *Theory of Morals*, particularly bk. i, ch. 3.

devoting his constant and total activity to the welfare of his fellows in loving service, thus obeying the perfect law of love and liberty, and thus promoting, as an unsought consequence, both his own and their happiness. The ideal of an ultimate and absolute good is that of a complete organism whose members coöperate in entire harmony; which implies the fulfilling by every organ of its normal functions, and hence the perfect wholeness of the organism. It denotes, negatively, the absence of all discord, of all impurity; positively, the perfection of functional activity.[1] In the moral sphere, each rational being is himself an organized whole, and also an organized member of wider organisms. Now, since in every organic whole each member is at once means and end to every other, the law of an intelligent organism requires that each member become voluntarily an active imparting means, as well as a passive receptive end. Herein is the ideal of welfare, and the sphere of the moral law, which commands every man to seek, not his own, but another's weal.[2] Its observance regards that wholeness which is the *summum bonum*.

The correlative concomitant of wholeness or holiness is beatitude or blessedness. This is more than happiness, as holiness is more than virtue.[3] Virtue implies a struggle, and a virtuous being is still under and continuously endeavoring to conform to the law. But in holy beings there is no struggle, they are not under the law, but dwell in a realm of perfect love, liberty and bliss.

[1] See *supra*, §§ 15, 16.

[2] See 1 *Corinthians*, 10 : 24, 33, and *Galatians*, 6 : 2.

[3] Carlyle, in *Sartor Resartus*, bk. ii, ch. 9, notes a difference between happiness and blessedness. Hesiod and Homer, in speaking of the gods, call them, in an absolute sense, μάκαρες, blessed ones.

CHAPTER XIII

DEITY

§ 98. The existence of God is a postulate of Ethics.[1] A speculative system may be evolved from the mere conception of a deity, a conception such as is found, with many modifications and varying in degree from obscure to clear, in every human mind. But a true ethical theory, thoroughly established as a correct representation of its matter, to be complete and fully rounded out in accord with the demands of philosophical system, must posit as essential, not merely the conception, but the reality of Deity. We might adopt, relative to ethical system, the saying of Voltaire that "if God did not exist, it would be necessary to invent him; but all nature cries out to us that he does exist."

In modern times the attempt has been made, especially by the Comteists, to devise a system of humanitarian ethics, shutting out even the thought of God. To give such scheme philosophic unity and completeness, its authors have been necessitated to find a common end for all lines of moral activity, and they propose the general welfare of Humanity. This Humanity is personified, and set up as an object of reverence, and even of worship.[2] Or the deity recognized in the affairs of the world is "the Stream of Tendency that

[1] See *supra*, § 13.

[2] See Frederic Harrison's *Apologia pro nostra Fide*, in *Fortnightly Review* for Nov., 1888. In a work by H. Gruber, *Der Positivimus*, *u. s. w.*, 1891, may be seen an account of the ceremonies of the orthodox positivists of France and England. They have their liturgy, prayers, sacraments, pilgrimages, everything but God; a solar system without a Sun.

makes for righteousness," which is "the Eternal, not ourselves." [1] A modified view substitutes "the Unknowable," which, notwithstanding the negation, is defined to be "formative force, working according to its inner necessity." [2] But it is very certain that a generalized abstraction, rhetorically personified by a capital letter, will never satisfy the minds and hearts of men, nor even meet the demands of a godless philosophy. Such proposed end of human endeavor is at most either a logical generalization, gathering up in an abstract formula the moral causes manifest in secular history, or an enfeebled pantheism. True ethical theory, however, arises, not from impersonal generalities, but from individual men and combinations of rational beings in their actual relations; not from intellectual abstractions, but from concrete realities the most vivid and stern.[3]

[1] Matthew Arnold.

[2] Herbert Spencer.

[3] "If, as is the case," wrote Cardinal Newman, "we feel responsibility, are ashamed, are frightened at transgressing the voice of conscience, this implies that there is One to whom we are responsible, before whom we are ashamed, whose claims upon us we fear. If in doing wrong we feel the same tearful, broken-hearted sorrow which overwhelms us on hurting a mother; if on doing right we enjoy the same sunny serenity of mind which follows on receiving praise from a father — we certainly have within us the image of some Person to whom our love and veneration look, in whose smiles we find our happiness, for whom we yearn, towards whom we direct our pleadings, in whose anger we are troubled and waste away. These feelings within us are such as require for their exciting cause an intelligent being."

"Man is not mere understanding," says Professor Paulsen, "he is above everything else a willing and feeling being. Feelings of humility, reverence, yearnings after perfection, with which his heart is inspired by the contemplation of nature and history, determine his attitude to reality more immediately and profoundly than the concepts and formulæ of science. Out of these feelings arises the trust that the world is not a meaningless play of blind forces, but the revelation of a great and good being whom he may acknowledge as akin to his own innermost essence."

"Our human consciousness," says Professor Findlay, "being without a counterpart or explanation in the world of nature, reaches out to some over-

One point may be particularly noticed. Ethical schemes that do not recognize a personal sovereign Deity are unable to provide for the perfect administration of justice; they find no court of appeal beyond the consensus of men. Now, from the patriarchal day of Job until this late and enlightened day of ours, it has been and still is the common conviction of thoughtful observers that the distribution of rewards and punishments, the avenging of wrongs, the adjustment of claims, in the historical life of our race, fail of righteousness. But such is the profound faith of mankind in the ultimate triumph of the principle of universal justice that this further conviction prevails: There must of necessity be a supreme court of appeal which shall, in an after life, administer retribution, vindicate justice, and establish righteousness. Unless there be such provision, there is no ground for faith in the unity and supremacy of moral law.[1]

§ 99. The ethical theory herein proposed posits as essential the real existence of a personal Deity. The one eternal God, from everlasting to everlasting, the almighty maker of the world, himself a spirit and the father of our spirit, the founder and center of all truth, the supreme ruler and final judge, unfailing in strict justice while abounding in tender mercy, a perfect person conscious of holiness and ruling in love — he it is on whom an intelligent faith rests as the

consciousness, some personal God in whom it may rest and find its element. The finite spirit demands the infinite, as each atom of matter the boundless space." See *supra*, § 50, note.

1 "In the corrupted currents of this world
Offence's gilded hand may shove by justice,
And oft 'tis seen the wicked prize itself
Buys out the law; but 'tis not so above:
There is no shuffling, there the action lies
In his true nature, and we ourselves compell'd
Even to the teeth and forehead of our faults
To give in evidence."
— *Hamlet*, Act iii, sc. 3, l. 67 *sq.*

original source of authority, and who as legislator, judge and executor in one, shall finally perfect all righteousness.

To those objecting to the anthropomorphic character of this conception, a sufficient reply is that no other kind of notion is possible to the human mind. For us God is thus, or he is not. Holding this to be the true conception does not degrade the Deity to the human rank, but lifts the human to the divine. He has made us in his image, a little lower than divinity, that in his likeness we may become partakers in his glory.[1]

Should it be objected that the introduction of a supernatural element into an explanation of natural phenomena is unscientific, we admit this to be true of physical science, which is concerned with second causes only, having no recourse to a first cause. Bacon in his Organum, and Newton in his Principia, make frequent and devout reference to the Deity, though not as a factor in their systems; but Laplace, it is said, when asked by Napoleon why he made no reference to God in his Méchanique Céleste, replied: Sire, I had no need of that hypothesis. So the physics of to-day very prop-

[1] Nothing less than personality in the Deity will satisfy humanity. Pantheism freely uses the name of God, and Spinoza, perhaps the most famous of pantheists, was surnamed "the God-intoxicated." But this God is not our God. The God of the pantheist is Nature, impersonal, unconscious, necessitated. See *infra*, § 142. Pantheism can never be a religion, meeting the demand of the soul for a sympathizing person as an object of adoration, petition, worship. "If we will but listen attentively, we can hear in all religions a groaning of the spirit, a struggle to conceive the inconceivable, to utter the unutterable, a longing after the Infinite, a love of God. Whether the etymology which the ancients gave of the Greek word ἄνθρωπος, man, be true or not (they derived it from ὁ ἄνω ἀθρῶν, he who looks upward); certain it is that what makes man to be man, is that he alone can turn his face to heaven; certain it is that he alone yearns for something that neither sense nor reason can supply." — MAX MÜLLER, *Science of Religion*, Lec. 1.

> "Pronaque cùm spectent animalia cœtera terram,
> Os homini sublime dedit, cœlumque tueri
> Jussit, et erectos ad sidera tollere vultus."
>
> — OVID, *Metamorphoseon*, 1, 2.

erly makes no mention of the Deity. But in metaphysics the chief problem is the existence of God. Ethics, which also is not a science of material nature, but of human nature, of man on his spiritual side, in like manner transcends physics. It treats exclusively of mental states and acts, of phenomena of the soul or spirit. The facts on which its theory is based are subjective facts of direct observation by introspection, which are combined with inferences from them and from observed external activities. Here we are wholly within the spiritual sphere.[1] A clear distinction may be made, by a difference in degree, between the human and the superhuman, but who shall draw the line between the natural and the supernatural?[2] To posit in the spiritual sphere a supreme personal spirit, so far from being unscientific, is simply to complete the content of the sphere with a substance and its attributes, with the conscious personality of a rational being, in kind like to that which gives rise to the theory; and therefore this complementing of the scheme is strictly scientific.[3]

[1] See *supra*, § 18, note.

[2] Professor F. Godet, in his *Defence of the Christian Faith*, Lec. 4, p. 148, Lyttleton's translation, seeks to do so. He defines the supernatural as "any modification of being in nature which is not the effect of the forces with which it is endowed, or of the laws under whose command those forces act." Of such modifications he finds two cases, "the one existing in nature itself, man; the other, above nature, God," both characterized as supernatural beings by freedom. Passing by the errors of viewing laws as causes, and natural laws as mandatory, we remark that to say the freedom of man, a being within nature, "is not the effect of the forces with which it [nature] is endowed," is inept, unless "nature" be restricted by definition to a meaning more narrow than that commonly understood in scientific discussion. Freedom is not something superadded to man's nature; it is the very law of his being, and essential also in the nature of a personal Deity. See Bushnell, *Nature and the Supernatural*, ch. 2.

[3] Should anyone flippantly say that the introduction of the Deity into ethical theory renews the *Deus ex machina* of the ancient drama, a god let down at last, from the machinery overhead, to disentangle the imbroglio on the stage, the answer is easy. Theism posits God as the only explanation

§ 100. The ground from which the doctrine of this treatise has thus far been developed, is the natural constitution of man. His several powers of intellect and will, his emotional capacity, and the impulse to activity in his motive desires, have each a normal and coöperative function. Herein is discerned the principle that it is right to gratify normal desire, together with the supreme law of humanity commanding the constant order of facts that ought to be, the single imperative of trespass, duty, justice or loving service. Now, it may reasonably be asked whether the common constitution of human beings is to be regarded as an ultimate ground, an original source of obligation, beyond which there is no determinant.

Positivism answers affirmatively, which consists with its rigid empiricism. But we have tried to show that there is for us something more than experience. Evolutionism finds an antecedent determinant in the environment, a combination of second causes, under whose influence the human constitution has been developed. But when we consider the great variety of environment to which the several races of mankind have been subjected, we should expect, on this view, to find a corresponding variety of constitution, and consequent varieties of moral law; whereas, however great the variations in degree especially of intelligence, and the variety of constructions built upon the law, still, throughout history and everywhere, mankind is one, and the law is one.[1]

of cosmic order, as both establishing and maintaining. If from the drama of human life his part be left out, then indeed it were a comedy to those who think, a tragedy to those who feel. But on recognizing him as its author director, and principal personage, present throughout, combining, regulating, overruling the great lines of action amid a free play of characters, the whole becomes intelligible, the obscure clear, and the ultimate solution foreseen.

[1] The pessimism of Pascal led him to say, in *Pensées*, that justice on one side of the Pyrenees is a different thing from justice on the other side. But even Hobbes found place to say: "The laws of Nature [meaning of Human

This essentially permanent uniformity points distinctly to an origin for the human constitution in a cause beyond itself and its environment, and, on the principle of like effect like cause, to a common cause, to a unity in the originating cause.[1] The existence of an omnipotent and consistent maker and ruler, is the only satisfactory explanation of these significant facts that has been or can be offered, and this explanation alone fulfills the demand of ethical theory.

§ **101.** Many theistic moralists hold that the will of God is the original and ultimate ground of obligation. He has made us as it hath pleased him, revealing his will in us, and in our relations to each other and to himself. A reverent interpretation of nature and of history enables us to understand his will more clearly, and to these he has added a distinct revelation of it in the holy scriptures. Had it pleased him to make us and our surroundings otherwise, or merely to issue different, even contrary, commandments, our obligations would have been different from what they are, since his express will is their sole, sufficient and final ground.

That the will of God, however revealed, defines our obligations is unquestionable. But we cannot regard his authority as decisive, if it be merely arbitrary; for this view implies the possibility of contradictions that are revolting. Should he capriciously command lying, murder, theft, all heaven and earth would rebel. The doctrine unwittingly represents him as a tyrant ruling by fear, liable to transient whims inverting right and wrong, disordering order, compounding felony, falsifying truth, thereby divesting his intelligent

Nature; see *supra*, § 18, note] are immutable and eternal. What they forbid can never be lawful; what they command can never be unlawful." — *De Cive*, vol. ii, p. 46.

[1] See *Elements of Inductive Logic*, § 21; and Kant's *Critique of Pure Reason*, p. 384 of Meiklejohn's translation.

subjects of all reliable knowledge of himself and of his creations. Such notion is psychologically, philosophically and logically absurd.[1]

We must look beyond the will of God for the ultimate determinant of obligation, into that which determines his will, into his original, eternal, essential nature. Necessarily and rightly we conceive of him as a spirit, having harmonious attributes constituting his nature, in which is no variableness nor shadow of turning. Being in himself the embodiment of truth, it is impossible for him to lie; being essentially just, he can never justify crime; such self-contradiction would dethrone him, would be the suicide of God. His omnipotence is not absolute, but limited to what accords with his nature, and his every action is confined to the strait and narrow way of righteousness. The macrocosm, the world, "answering his fair idea," conforms in the fixed material laws to his unchanging essence, and the uniformity of nature is the faithfulness of God. The microcosm, man, the express image of his person, is formed to conform in the fixed moral law to the same unchanging essence, and the oneness of justice is the righteousness of God. It is not the will, but the nature of the Deity that is the original and ultimate ground of obligation.[2]

[1] "Amongst the rational principles of morality," says Kant, "the ontological conception of perfection, notwithstanding its defects, is better than the theological conception which derives morality from an absolutely perfect divine will." If we avoid a gross circle tacitly presupposing the morality which it is to explain, "the only conception of the divine will remaining to us is a conception made up of the attributes of desire for glory and dominion, combined with the awful conceptions of might and vengeance; and any system of morals erected on this foundation would be directly opposed to morality." — *Grundlegung, etc.*, Abbott's trans., p. 89.

[2] "Here is the Ground of Right; the nature and character of God, the great designer and creator of all things; and my nature and character so far as I am the expression of this creator and his design. I am right when energizing and controlling myself in accordance with these; my rights are

§ 102. The final problem in our obligation to each other is now readily solved. The prior examination of human nature found it constituted for a free and harmonious play of its powers in the exercise of loving service, and this was recognized as the sum of obligation. Further examination has disclosed that human nature is derived from and akin to the divine nature, so that in promoting the welfare of each other, men are conforming to the divine will arising from the divine nature. The maker and ruler has given to every man more or less ability to promote the common welfare, and holds him accountable for its exercise. Whoever unwarrantably interferes with this service trespasses both on the servant and on the served, and thereby violates the divine will and nature. Much has been said about the divine right of kings. Every man's right is a divine right; both because of its origin, and because it involves the right of the Deity himself. Hence the sacredness of human rights, and the paramount obligation to respect them. Arising from the very nature of God, they are invariable, inalienable, irrevocable, grounded in eternal justice and truth, and he who would violate them is at war with the inflexible Almighty.

Along with our obligation to each other is our obligation

whatever may be necessary to my so doing. By knowing and doing the right, I attain to excellence; excellence brings enjoyment; and in the two combined I find blessedness." — A. T. Bledsoe in *Southern Review* for Oct., 1875, p. 436.

The theistic moralist may learn much from heathen philosophy. "This then, as it appears to me," says Cicero, "has been the decision of the wisest men, that law was neither a thing contrived by the genius of man, nor established by any decree of the people, but a certain eternal principle which governs the entire universe, wisely commanding and forbidding. Therefore they called that primal and supreme law the mind of God enjoining or forbidding each separate thing in accordance with reason. On which account it is that this law, which the gods have given to the human race, is so justly praised. For it is the reason and mind of a wise Being equally able to urge us to good, and to deter us from evil." — *Laws*, i, 4.

to God. To him is due, in the most comprehensive sense, loving service. We are bound to love God for his own sake, and all others for God's sake.[1] The recognition of him as our personal creator and ruler, and of our obligation to him as his creatures and subjects, leading to adoration, is religion, the binding of man to God.[2] Thus ethics expands over religion by comprehending the author of our being, the father of our spirit, the eternal One from whom all our obligations arise, and in whom all our obligations end. He desires all that is disorderly to become orderly, and calls upon his rational free creatures to gratify, so far as in them lies, this desire; hence it is hardly too much to say that our conduct affects the welfare and happiness of Our Father.[3] To serve rightly our fellows for his sake, is to serve him; and a trespass upon a fellow man is a trespass upon him. Moreover, he has a supreme right to our reverential worship, and omitting or neglecting it is using our freedom, which having given he will not revoke, to restrict his liberty in gathering up his due.

Contemplating, inversely, the relation of God to man, we observe that the obligation is not properly reciprocal. We

[1] Which brings the peace of God that passeth understanding.

"D'un cœur qui t'aime,
Mon Dieu, qui peut troubler la paix?
Il cherche en tout ta volonté suprême,
Et ne se cherche jamais.
Sur la terre, dans le ciel même,
Est-il d'autre bonheur que la tranquille paix
D'un cœur qui t'aime?"

— RACINE, *Athalie*, close of Act iii.

[2] Religion, from Lat. *religio;* etymology doubtful. "Allied to *religens*, fearing the gods, pious; and therefore not derived from *religare*, to bind, as often supposed." — SKEAT. Lactantius of the third century, followed by Augustine of the fifth, and many others, held that it is from *re-ligare*, to bind back or anew. This, however, seems to refer to the Fall, which is hardly allowable to an ante-classical word.

[3] "To do good and to communicate forget not; for with such sacrifices God is well pleased." — *Hebrews*, 13 : 16.

cannot think of the Deity as under any obligation, under any law, under anything; for this contradicts his essentially absolute supremacy and sovereignty. But while it cannot correctly be said that he is bound to be steadfast in purpose, and faithful in promise, it is very certain that he will be thus, and all that is righteous, because of his ultimate nature.[1] Now, as the universality of physical, psychical and ethical law indicates his unity, so does the total content of ethical law, loving service, indicate his benevolence. He seeks the welfare and consequent happiness of his sentient creatures in his own constant loving service of them, both by direct providence, and by the obligation laid upon them to serve each other. Hence are we confident of his inexorable and perfected justice, essential to entire welfare, in which justice every life shall eventually be complete; also of his tender mercy to the erring, he having opened a way, through infinite self-sacrifice, whereby to be just and yet justify the penitent, and secure to him eternal welfare and blessedness. Our God is no egoist, but an altruist. He did not make us, nor does he rule us, for his own glory, but for our own beatitude. God is love.

[1] We speak of his justice and holiness, but never of his duty or virtue. "No imperatives hold for the divine will, or in general for a holy will; *ought* is here out of place, because the volition is already of itself necessarily in unison with the law." — KANT, *Grundlegung*, *u. s. w.* § 43.

Bacon, in his treatise *Of the Advancement of Learning*, bk. vii, quotes Aristotle as saying: "As beasts cannot be said to have vice or virtue, so neither can the gods; for as the condition of the latter is something more elevated than virtue, so that of the former is something different from vice."

Πᾶν τὸ σῶμα συναρμολογούμενον καὶ συμβιβαζόμενον διὰ πάσης ἁφῆς τῆς ἐπιχορηγίας, κατ᾽ ἐνέργειαν ἐν μέτρῳ ἑνὸς ἑκάστου μέρους, τὴν αὔξησιν τοῦ σώματος ποιεῖται εἰς οἰκοδομὴν ἑαυτοῦ ἐν ἀγάπῃ.

ETHICS

SECOND PART — ORGANIZATION

TRANSITION

§ 103. A glance over the course thus far pursued will prepare for further advance. The purpose of Ethics is to bring our ordinary moral judgments, so far as they tally with enlightened conscience, into a coherent system, discovering in them a principle which shall give it philosophic unity, and also furnish, if we would not have a mere castle in the air, a foundation on which to build. Beginning with the common notion of a right, its condition is at once seen to be a reciprocal relation between persons, each having orderly claims upon the other, which claims compose his rights. These rights are grounded in the very constitution of human nature, which, moved by its normal desires, seeks their gratification. The fundamental right is a right to liberty in this pursuit. This is the primary principle of Ethics. An intentional violation of a right, an interference in one's proper liberty, is a wrong, a trespass, which being a subversion of constituted order, is forbidden. This is the moral law, discerned by conscience, and supported by subjective and objective sanctions.

Obligation takes several forms whose essence is one. Primarily its law forbids aggressive trespass, then equally it forbids retentive and neglective trespass. From these emerge

the comprehensive forms of justice, duty, virtue, service and love, the last pair being the choice expression simply because it brings more clearly forward the common essence. For, in examining the springs of action, the affections are seen to be naturally paramount, all other desires ancillary and disinterested. They are inconsistent with interested motives whose ends, lying within the agent himself, are selfishly opposed to loving service. The ideal man expends his energies in serving the interests of his fellows without thought of his own as separate and independent, but only as involved in the common welfare.

It should be observed that there are three principal notions pervading the discussion, which grow out from the fundamental notion of rights. These are:

1st. Trespass, in its direct and indirect sense, which as forbidden expresses the whole of obligation.

2d. Trust, in the active sense of mutual confidence that the law of trespass will be observed; and in the passive sense of stewardship, of being a trustee of all possessions, including life itself.

3d. Defense, meaning the right and duty to guard trusts by resisting encroachment on them; which is the only premise that can warrant an interference in another's liberty.

A strict and generous conformity to law results in common welfare. Welfare consists of liberty and continuous success in the exercise of benevolence and beneficence. The correlative criterion and natural consequence of welfare is happiness, which involves the special pleasure arising from a consciousness of disinterested conduct, and in general that arising from the satisfaction of enlarged and harmoniously regulated desires. But it is the essential dignity of benevolence rather than the resultant happiness that makes common welfare the proper aim and end of endeavor.

Finally, the general constitution or nature of mankind is

not the ultimate ground of obligation. A practical ethics may be built upon it, but complete theory needs to look beyond, into the nature of the Maker, which is the ultimate determinant of all nature, and more especially of the native obligation which binds his rational creatures to each other and to himself.[1]

§ **104.** We are to pass now from the consideration of obligation, a binding together, to that of organization, a working together. Heretofore the simple reciprocal relation of man to man, with occasional anticipations of other relations, has been the basis of our explanation. This view has proved sufficient for the development of certain ethical principles, and their application to the case supposed. But human relations are mostly complex, consisting largely of relations of the individual man to societies, and of societies to their individual members, and also of societies to each other. In considering hereafter these complex relations, it will be found that the same principles without addition are applicable to solve the obligations involved. The right aim of society, in its various organic forms, is likewise the common welfare, to be sought under the impulse of love. Every moral agent is a member of some system in whose welfare his own is bound up, and thus sharing his own beneficence, he finds his welfare, not in opposition to or deprivation of others or in any self-seeking, but in union with his kind.

[1] The doctrine that the moral law is discoverable in the constitution of human nature brings to light the profound ethical significance of the motto inscribed over the portal of the temple at Delphi: Know thyself. See in *Elements of Psychology*, opposite p. 1, Plato's comment as found in *Charmides*, 164d, Step.

Perhaps the first who declared the unity and divinity of the law was Herakleitos of Ephesus (*circa* 500 B.C.) who, in Fragment 91, says: "All human laws are nourished by (or fed by, and so get their strength from) *One*, the divine (or of God); for it has power (strength, force) so much as he wills, and it has enough for all, and more than enough." See his words on the title-page of this volume, and *cf.* his κοινός (ξυνός) λόγος in Fr. 92.

The advantage of organized effort is familiar in the notion of help, the combination of several energies to accomplish a single purpose, one will directing many forces to the same end. The will may be that of one man, as a Cæsar, a Loyola, a Richelieu, a Napoleon, a Bismarck, overmastering and bringing to unity the wills of a multitude; or, turning from autocracy to democracy, the unity of many wills may be the result of a free consensus, as in a republic, and in voluntary associations of all kinds. In this oneness of will the divided becomes an individual, a Briareus. What is subjectively plural is objectively single. The individuality is complete in its solidarity, and the combination is to be judged as an undivided whole, whether it be a family, a mercantile firm, a society, an army, or a nation.

Likewise let it be observed that conscience is catholic, and the law it reveals universal. Now a combination of men for a common purpose or purposes must be duly regulated by the common conscience. An organized association is responsible for its official actions. Even a nation may do right or wrong, and accordingly is honored or censured and perhaps punished. As a common will makes it an individual, so a common conscience makes it a person; for as a body it is conscious of obligation, and thus is a person. This organic personality, though not wholly independent of, yet is to be distinguished from, the private and persistent personality of the members taken severally, for it implies a mass of superadded obligations dominating the whole. Thus an organism, or that wherein all parts and the whole are mutually means and end, is recognized, when it consists of men, as an individual personality, subject in all functional activity, both internal and external, to the moral law.[1]

[1] Relative to this general topic, see especially *supra*, §§ 14–16.

CHAPTER I

THE MAN

§ 105. It will be well, as introductory to the subsequent matter and for the sake of its clear treatment, to examine here the organic character of the human constitution.

Each individual man is a completely organized being. Primarily he consists of a body and a mind or spirit. He is essentially a duality. A human body without a mind is not a man; it is merely a corpse. A mind without a body is — science knows not what. The disembodied human spirit may furnish matter for revelation, but since it presents no phenomena for our observation, it is beyond the reach of science. The man we study is a body and mind. These are coördinate. Both being essential, we cannot say which has priority in efficiency, any more than we can say which blade of a pair of shears does the more work. They coöperate, and neither can perform its functions apart from the other. Thus the body is for the mind, and the mind is for the body. Each is a means serving the other as an end, so that together they constitute a duplex organic whole.[1]

[1] For definition of organism, see *supra*, § 15. Ever since Plato declared the end of philosophy to be unity, science has constantly been seeking the reduction of the many to one; and in the history of philosophy we find a doctrine of the absolute. But does not the ultimate constitution of the universe of things seem rather to be essentially duplex; essential, since each thing depends for its actuality upon some other; ultimate, since analysis of what is essentially a pair is annihilation? God and the world; creator and creature; the spiritual and the corporeal spheres; mind and matter; subject and object; means and end; time and space; attraction and repulsion; love and hate; heaven and hell; good and evil; and so on indefinitely.

Evidently the body is itself an organism. The limbs are for the sustenance of the trunk, and the trunk is for the sustenance of the limbs. If the body suffer mutilation, the loss may in a measure be compensated by an increased or a specialized activity of other organs, yet it is a defect. The heart supplies the brain with blood, the brain supplies the heart with energy. Moreover, each subsidiary organ is itself an organism. The visual organ, the eye, serving as a guide to the movements of the whole, is composed of various organs, as the cornea, the lens, the retinal screen, each of which is a means to every other as an end. Thus the whole body is an organism composed of many organisms, to each of which every other and the whole brings its contribution.[1]

§ 106. The mind is a complement of faculties, an assemblage of functions.[2] Its several generic powers, knowing and

That contraries are first principles of entities is a Pythagorean doctrine (see Aristotle's *Metaphysics*, bk. i, ch. 5). Necessarily we conceive things by virtue of their oppositions (see *Elements of Psychology*, § 56 *sq.*), and if the realities correspond with our conceptions, the universe is a system of counterparts in couples polarized. See *supra*, § 14 sq.

Philosophic materialism on the one hand, and idealism on the other, teach monism, the unity of the human being, of self; but the prevailing doctrine in philosophy is dualism, and such is the common notion of mankind. This dualism of mind and body is usually thought of as limited to mankind, or at most extended to animals; but, in the very dawn of philosophy, two centuries before Plato, the Ionians taught hylozoism, ὕλη, matter, and ζωή, life, that all matter is endowed with life, or, as Thales expressed it, all things to be full of gods, πάντα πλήρη θεῶν εἶναι. — Aristotle, *De Anima*, i, 5. This doctrine, with some modification, has in our day been revived under the title panpsychism or the universal subconsciousness of matter. See Paulsen, *Introduction to Philosophy*, bk. i, ch. 1, § 5.

[1] "In the physical constitution of an organized being," says Kant, "we assume it as a fundamental principle that no organ for any purpose will be found in it but what is also the fittest and best adapted for that purpose." — *Grundlegung, etc.*, Abbott's trans. p. 13. What follows on pp. 14–16 will repay thoughtful reading.

[2] See *supra*, § 1, and note; also § 16.

feeling, desiring and willing, are reciprocally related. Each class is a means to the others as ends, enabling them to fulfill their normal functions. Were there no intelligence, there could be no emotion or sentiment; were there no intelligence and feeling, there could be no desire; were there no desire, there could be no volition; and were there no motived volition, there could be no intelligence higher than mere brutal receptivity. Each serves the other and the whole.

We must be on our guard lest we transfer to this spiritual sphere our notions of corporeal organs. These organs are distinct entities standing apart in space; whereas the mental faculties and capacities are simply properties or functions of one and the same entity whose substance has no relation to space, except through the incorporating body.[1] It is nevertheless evident that these generic properties are mutually related as means and end. Hence they are organized as to their functions, and the mind, by virtue of this constitution, is a spiritual organism.

Furthermore, the specific powers are organically related, each special faculty being supported in the exercise of its functions by each and all the rest of its class. It will be best to exemplify this by the desires, with which, as motives of the will, we are here particularly concerned.

The desires are primarily divided into the craving desires, or appetites and appetencies, whose function impels to acquire, and the giving desires, or affections, whose function impels to impart.[2] This opposition is merely logical, for actually, in their naturally constituted order, they coöperate, the former seeking to acquire in order that the latter may be prepared to impart. The suppression or hinderance of either would be a mutilation, worse than the amputation of a leg or arm. As already pointed out, the exercise of the

[1] See *Elements of Psychology*, §§ 77, 78, 149, 154.

[2] See *supra*, §§ 5, 6.

craving desires in disregard of the affections, is abnormal, leading to a distraction of the affections from their proper objects, and to a subversion of their functions; also the exercise of the affections in disregard of the appetites and appetencies, is abnormal, leading to inefficiency from lack of resources supplying what affection would bestow; but, if both classes be exercised according to their constitutional relations, each with regard to the other, then the offices they are naturally fitted to fulfill are performed, their several and combined efficiency is attained, and their exercise is normal.[1] Each is for the other.

The same principle is applicable to all the various mental powers both in particular and in general, thus showing the mind as a whole to be an organism consisting of minor or subsidiary organisms so delicately adjusted that an excess or deficiency or distortion in the action of any one disorders every other and the whole.

§ 107. Let us try for a moment to imagine what a man might be and become if he were somehow so separated from all objects of affection that it could have no play. We need not suppose him incapable of affection, but only that it be wholly dormant from lack of call. Allow that this solitary can provide the necessaries of life, and even many of its luxuries, and that he can successfully engage in self-culture. Prudently caring for his body, he is temperate, and enjoys physical health and strength. Under the impulse of craving propensities, he acquires a wealth of means to further enjoyment, and his cultured intellect gathers and delights in treasures of knowledge.

[1] See *supra*, §§ 78, 79. It should be observed that the term affection is used here and heretofore in its popular sense of benevolence. In its wider generic and scientific sense affection is of two kinds, benevolent and malevolent. See *Elements of Psychology*, §§ 262, 263. In general the benevolent affections are normal, the malevolent abnormal.

Now we point out that, in this imaginary case, there is strictly nothing moral or immoral; for, it is the relation to rational beings, including Deity, or at least to sentient beings, and not merely the possession of a rational nature, that determines the existence of rights and obligation. No trespass is possible, in case of an absolute solitary, for there are no rights or counter rights. No duty is done, for there is no one to whom a debt is due. There is no virtue or vice, for there is no law demanding conformity. There is no justice or injustice, for there is no claimant. Nor can there be loving service. Indeed, this isolated man is destitute of actual conscience, for no occasion would bring the potential to an actual discernment of moral law. He has no responsibility, is not a moral being, not human, not a man, *unus homo*, *nullus homo*, not a person, since he has no consciousness of obligation. With him nothing is either right or wrong; even suicide would not be a crime.[1] Truly it is not good that the man should be alone. Pleasures we allow he may have, even the intellectual; otherwise they are less than brutal, for the brute enjoys at least instinctive affection. But the solitary can never be happy, certainly not with that happiness which ripens into blessedness.[2]

It appears, then, that man is essentially a moral being, and therefore essentially a social being. So let us change our supposition from one solitary to one in society, whose affections, however, are wholly dormant because of his entire selfishness. Guided by the counsels of prudence,[3] negatively in avoiding harm, positively in securing personal benefit, he may accomplish the correct functioning of his physical organs, and maintain his body in wholesome condition. Also he may wisely discipline his intellectual powers, and regulate his passions and emotions, and so attain a high grade of efficiency. Moreover, by observing certain rules of art, using

[1] See *supra*, § 85, note. [2] See *supra*, § 97. [3] See *supra*, § 44.

his fellows as means to secure his own ends,[1] he may accumulate wealth, power, and fame. Such seem to have been the character and aims of the more refined peoples of antiquity, especially of the Greeks. Their self-culture, looking solely to the beautiful development of the individual man, was very sensitive to the aesthetic elements essential to excellence, while the ethical elements were more lightly esteemed and often disregarded. The tendency was strongly egoistic, seeking the enjoyment of a fair personality, and its secure tenure against infringement. And in modern times such self-culture is widely and highly approved, many moralists making it the basis of their systems.

The supposition of a cultured man in society without natural affection is monstrous. Unlike the solitary, he is a morally responsible person, for conscience in him is actual, the law is upon him, and in his disregard of all save his own interests, he is a law-breaker, thoroughly immoral. Yet, strange to say, he may be a good neighbor and citizen; for, if one selfishly serve his own interest with far-sighted prudence and wide-reaching wisdom, this works out for society very much the same result as if his energies were wholly devoted to thoroughly unselfish, disinterested, loving service. Such is the economical ordering of human affairs.[2] But it does not so work for the man himself. Though far from criminal or even disorderly, though he do not sin with his lips, and though he practice, for his own ends, a large beneficence, yet, without benevolence, he is a whited sepulcher, a hypocrite, a moral monster. More likely, however, the inward corruption breaks forth, poisoning the air and multiplying ills. This has usually been the historical result.[3] These considerations illustrate the fact that men are social

[1] See *supra*, § 84. [2] See *supra*, § 76, note.

[3] See the catalogues in *Romans*, 1 : 28–32, and 2 *Timothy*, 3 : 1–5. *Cf. Colossians*, 3 : 5–8.

beings in the sense of interdependence, not merely for the common needs of pleasurable living, but also for moral development by the exercise of mutual affection, through which alone the dignity of complete manhood is attainable.

§ 108. But in real human life there is not and cannot be thorough seclusion. A solitary is a mere negation, a metaphysical abstraction, a logical ghost. We find ourselves in a world of fellow beings from whom it is impossible to be completely absolved. Even a Selkirk on his desert isle not only remembers his former associations, but contemplates the possibility of a return to the world, and hence is bound to comport himself with reference to it, to care for and cultivate his powers as far as may be in view of that possibility. But should he reasonably despair of a return among men, still he may not neglect his personal dignity, or ever, even under the greatest suffering, take his own life; for he cannot know his future here, and one relation, the chiefest of all, persists. He is bound by indissoluble obligations to his maker, law-giver and judge, whose claims are never released, and whose honor is involved.

Also let it be remarked that the individual owes his existence, as well as the possibility of its continuance and of all moral culture, so much to the human society in which he is ordinarily included, that it is rare to find one so totally depraved as to be entirely destitute of all natural affection. A mother gives birth to her child; therein and thereafter the moral tie binds. No distance of place or time can attenuate it to nothingness, no violence can sever it, even death spares a bond in dutiful memories rendered more precious and sacred by loss. Can a woman forget her sucking child, that she should not have compassion on the son of her womb? Hardly is it possible. Can a son forget the mother who bore him, that he should not have compassion for her

pains, her nurture, her watchings, her tender caresses? Hardly, yet perhaps less rare. Shall he not, even in mature years, honor his father and mother with kindly watch-care and grateful memories? Surely, even amid a godless civilization, or even amid a barbarous heathenism, Nature will enforce in some measure her claims to loving service.[1]

§ 109. If we view each man, then, as an organism of organized organs, these standing to each other and to the whole in a relation of interdependence, and if we observe that he has the power of self-direction and control, it is clear that it is within him to conserve and cultivate his natural powers by regulating their organic relations, and that the bringing of all the corporeal and spiritual powers with which he is endowed by nature into full activity and harmonious coöperation, is the discharge of obligation and the perfection of manhood. But also it is clear that the constitution of the man, apart from his affections, furnishes no ethical element, no basis for an ethical system. His subsidiary powers of body and mind are not persons, and there is no moral element that does not involve a personal relation.[2]

[1] "We could not live in society unless we had some of the qualities of the moral character. We should be what Hobbes supposed us to be, mere brutes with intelligence enough to see that it is best to give up something in order to attain a greater good. Honesty then were honesty only because it is the best policy."

[2] "The trifling of comparing society with a living organism, that is to say, that of a man or an animal, and of making the functions of the latter the pattern for its regulation, is altogether fruitless. The essential difference is overlooked, that every such living organism serves a single individual soul with very many wholly impersonal parts; while in society many individual persons unite themselves into a community which does not exist apart from them as a distinct being." — Lotze, *Practical Philosophy*, § 49. Plato committed this "trifling" in taking the organization of the individual man as the pattern for the constitution of his ideal republic. Also Frederick II: "As men are born and live for a certain period, and at last die of age or infirmity, so also States are constituted; they flourish for some centuries and then at last cease to exist." — *Antimacchiavelli*, ch. 9. So also

Such relation is necessarily implied in the existence and exercise of affection. There must be a sentient object, one capable of benefit, to whom there is conscious obligation. Herein, and herein only, personality appears; herein, and herein only, moral character has its root and growth. The affections being psychologically and ethically essential to integral manhood, it follows that a man cannot be truly and rightly a man apart from his fellows, and in his relations to them his conscience discerns the moral law demanding the exercise of righteous affections, and claiming recognition as the supreme law of humanity.

There is no need to consider further the individual man. We have noted him as a typical organism, pointing out that, apart from his relations to others, that is, in him alone, there is no ethical element. In the prior part of this treatise the reciprocal relations of man to man, in their ethical aspect, have been discussed at length. True the mere coexistence of two persons may correctly be construed as an organism, each being for the other and both for the pair; especially exemplified by partners in business, they being formally unified. But to view the simple relation of man to man as an organism would lead to no conclusions other than those already attained, and hence we may now dismiss this simple case also, and proceed to consider more intricate relations.

Herbert Spencer: "We find not only that the analogy between society and a living creature is borne out, but that the same definition of life applies to both." — *Social Statics*, p. 490. Elisha Mulford says: "The logical fallacy of defining an ethical by a physical organism, and limiting the one to the conception of the other, appears in Draper's *Civil Polity*. . . . But nations do not exist in history in this limitation in a physical sequence; they appear under the conditions of a moral life, and their growth or decay is traced, not in necessary, but in moral causes." — *The Nation*, p. 18, note. And von Mohl says: "These conceptions of the State and its correspondences based on physical science appear from time to time, partly through an altogether sickly tendency of thought, and partly through a mystical and fanciful conceit." — *Encyklopadie der Staatswissenschaften*, p. 84.

CHAPTER II

THE FAMILY

§ 110. A study of the simple relation of man to man has enabled us to discover the principles of obligation, with their application in equivalent intercourse. This exposition, however, though fundamental and widely comprehensive, is not exhaustive, and not adequate to the demands of right living. For, in actual life, the relations subsisting among men exhibit many varieties in kind, and those of the same kind many differences in degree; also these relations are subject to many and extreme changes, often amounting to reversal, due to growth, activity, and the ceaseless mutations of intercourse. Now, since all obligations originate in and correspond to present relations, it follows that the special duty of a man to some one on his right hand is rarely quite similar to what is due to some one on his left; also that his duty to either is often quite unlike the duty of that other to him; and further, that his duty to any one to-day frequently differs greatly from what is due to the same one to-morrow. It is needful, therefore, to consider the kinds of relations in which men stand to each other, and their variations, in order to determine the corresponding obligations.

The relations that obtain among men exhibit many varieties chiefly because of differences in social organization; under which general title, therefore, human relations and consequent obligations may be distributed and discussed. The procedure involves the principle that the perfection of natural order, its harmony and stability, require that each member fulfill its office in the several organisms to which it

belongs. This is a natural principle, physical and psychical and ethical, being applicable to the universe considered as an organic whole, as well as to each of its organized members, and specially, as we have just seen, to the microcosm, man. In society at large each one is morally bound to fulfill his functions as a member of the whole, and also as a member of each of those subordinate and constitutive organisms in which he is integrant. A study, then, of the chief constituents of society will bring into view the various kinds and degrees of duty corresponding to these functional relations, whose variations determine the variations of personal obligation under the sole but universal law of loving service. To this study we now proceed.

§ 111. Nature presents in both animals and plants a fundamental fact in sex. This is a primary, inerasable distinction that cuts all higher forms of animated beings, and especially the total of humanity together with every subordinate class of mankind, into two portions, delicately marked by anatomical and physiological variations which extend throughout the body, being discoverable even in the brain. The physical differences are normally attended by mental and moral differences which though less definite are not less deep, permanent and universal. In these differences originate an appetite and an affection which often become passionate, tending on the one hand toward the deepest degradation, and on the other to the highest exaltation. Hence it comes that the relation of the sexes is perhaps the most powerful social factor in every community, both savage and civilized.

Herein the pointing of nature is distinctly to marriage and offspring. It sets apart a pair, a male and female, for each other, their exclusive union being spontaneously guarded by hygienic barriers, and by a prompt jealousy, fierce and fatal. Offspring brings into play strong parental instincts, prompt-

ing protection, provision and nurture until maturity. Thus the family is preëminently a natural institution, which in some important respects takes precedence of all others, and is fundamental in the constitution of society.[1]

§ 112. The ideal family in modern society consists of a mature man and woman, not differing greatly in age, who of their own free will, have entered with civil and ecclesiastical forms, into the marriage bond, are living together as husband and wife, and providing for their yet unemancipated children. Their children are first a son, then a daughter, again a son, then another daughter. The parents, beside each other, have both a son and a daughter, and each child has both a brother and a sister. These exhaust the family relations. To complete this ideal, add a home, giving common shelter, furnishing conveniences, and serving as a local habitation and center of union.

What support this ideal receives from ethical principles will be more clearly seen after a detailed consideration of the several relations involved. But we make at once the obvious remark that it is not often fully realized, because of failure or irregularity in births, intervention of death, or extreme poverty. Still, even in such incomplete families, the relations are generally sufficient for the unfolding of the domestic virtues, the building of character, and the enjoyment of home life.[2]

[1] It is noteworthy that the zoölogist and the anthropologist, in their logical distribution of the animal kingdom into genera, species and sub-species, never recognize, even in the most insignificant varieties, sex as marking a class. This indicates that scientifically a male and female together constitute one individual of a kind. So in the story of Eden this essential oneness is singularly emphasized; see *Genesis*, 1 : 27; and 5 : 1, 2.

[2] "Home, its perfect trust and truth, its simple holiness, its exquisite happiness, is to the world what conscience is to the human mind." —BULWER.

§ 113. It is evident that a family is an organic union of several persons, as indicated in their common surname, and in the correlative terms husband and wife, parent and child, father or mother and son or daughter, brother and sister; each of these implying the existence of the other. Ethically each member is related to every other, and to the whole, as at once means and end. The existence of relations among these persons determines that there be corresponding obligations, and the variety of relations determines a variety in the obligations. The particular kind and degree of the obligation of each member, is determined by the special function belonging to that member in maintaining the orderly unity of the organism. Just this much is the duty of each, and no more.

If, however, there be, as there often is, disorder, distraction or failure on the part of some one member, requiring additional and special efforts on the part of the others to restore and maintain order and efficiency, then their duty is enlarged to meet the requisition. An excellent analogy is seen in the physical organism of the individual man. Each of the organs of his body contributes to the healthful action of every other, and all the others contribute to sustain each one. Moreover, when any one is disordered, there is a disturbance more or less general, a sympathetic suffering of all allied organs, and a feverish effort of nature to restore the normal condition.

§ 114. In the actual case of a man and a woman obeying the beck of nature, and entering into the marriage relation, let the distinct personality of each, and their entire moral equivalence, be granted; then several important truths are logically consequent.

First. In consenting to this union, both parties are to exercise their unbiased free will. Any unwarranted interference, objective or subjective, in the liberty of either is a

trespass the more grievous because of its far reaching consequences. It is true that circumstances often warrant or even require a hindering interference, extending perhaps to prohibition, on the part of parents especially, or of friends, or of the State; but it is obvious that, in a matter so extremely delicate, and of such vast importance to those immediately concerned, the warrant should be very clear. Compulsory marriage, on the other hand, is never warrantable, and is one of the grossest forms of trespass.

Secondly. Actual marriage, or the yielding of each to the other of what is peculiar to the distinct personality, works no detriment to the honor of either party, provided it be accompanied by an entirely voluntary, mutual and unreserved surrender of all the interests of life into the common keeping of both.[1] Thereby the pair, without losing the distinct personality, become a single individual personality. In this fusion, their honor, social standing, property and prospects are rightly held in common by each for the other, by each for both, by both for each. The two are one. Their joint welfare and happiness is an inseparable compound.

Thirdly. In the pair thus unified there should be but one will. A constant endeavor to harmonize opinions, sentiments and desires, wherein a firm adherence to principle is combined with a yielding even in matters of importance, results in a singleness of will that is essential to the perfection of the union. A tie so sacred should never be loosened by willful discord. Custom has established on firm and sufficient grounds that, generally speaking, the control in detail of interests outside the home shall be in the hand of the husband, and those within the home shall be subject to the management of the wife. But, while the decisions of each should be as far as possible in accord with the views and wishes of the other, yet, in case of a permanent differ-

[1] See Lotze, *Practical Philosophy*, § 35.

ence, the final decision should be left to the one in whose province the matter in question belongs.[1]

Fourthly. The union may not be enlarged by the addition of another partner. Polyandry or polygamy, common among brutes, is inadmissible among persons, it being inconsistent with the moral equivalence of the sexes. If more than one of either sex be bound to one of the other, the plurality is severally deprived of the rank of equal fellowship, and degraded to a thing useful merely as a means.

Fifthly. While it may be doubted whether there be physiological reasons why the marriage of persons of near consanguinity should not be permitted, the ethical reasons are

[1] We quote from Victor Hugo's "*Quatrevingt-Treize*," p. 492, part of a dialogue:

"Gauvain reprit:

— Et la femme? qu'en faites-vous?

Cimourdain répondit:

— Ce qu'elle est. La servante de l'homme.

— Oui. A une condition.

— Laquelle?

— C'est que l'homme sera le serviteur de la femme.

— Y penses-tu? s'écria Cimourdain, l'homme serviteur! jamais. L'homme est maître. Je n'admets qu'une royauté, celle du foyer. L'homme chez lui est roi.

— Oui. A une condition.

— Laquelle?

— C'est que la femme y sera reine.

— C'est-à-dire que tu veux pour l'homme et pour la femme. . . .

— L'égalité.

— L'égalité! y songes-tu? les deux êtres sont divers.

— J'ai dit l'égalité. Je n'ai pas dit l'identité.

Il y eut encore une pose, comme une sorte de trêve entre ces deux esprits échangeant des éclairs. Cimourdain la rompit.

— Et l'enfant! à qui le donnes-tu?

— D'abord au père qui l'engendre, puis à la mère qui l'enfante, puis au maître qui l'élève, puis à la cité qui le virilise, puis à la patrie qui est la mère suprême, puis à l'humanité qui est la grande aïeule.

— Tu ne parles pas de Dieu.

— Chacun de ces degrés, père, mère, maître, cité, patrie, humanité, est un des échelons de l'échelle qui monte à Dieu."

clearly good and sufficient. The marriage of members of the same family would bring about such an admixture of moral relations as to confuse the functions of its members, rendering them perplexing and distracting, and so disordering the harmony of its system. Hence the State, in the interest of the family, and of general society whose moral health is involved with that of the family, prohibits such marriage as incestuous, tending to disturb the normal operation of the family organism, and to check the unfolding of its peculiar beauty and worth.[1]

§ 115. Marriage is indissoluble, except by death or crime. If death sever the bonds, a new marriage of the survivor cannot be prohibited by the State, for civil law is properly concerned with temporal relations only, and so the question of second marriage must be left to the religious convictions of the parties. A formal dissolution of marriage is justified specially by the crime of conjugal infidelity, this being a violation of its peculiar significance and manifest purpose, and itself an actual breaking of the vow.

Legal questions concerning divorce, with permit of new marriage, present many difficulties, especially on plea of cruelty or desertion. But it is clear that a wished-for dissolution cannot rightly be decreed merely because of disease, poverty, misfortune, disappointed expectation, "incompatibility," whatever this may mean, or the dissatisfaction of one or both parties, or even because of wickedness and crime that does not victimize home. None of these can be allowed as sufficient ground for entire divorce, if society would preserve its moral health, so largely dependent on the sanctity

[1] For like reason it forbids the marriage of certain collateral relatives. English statute forbids even the marriage of a man with his deceased wife's sister, for which certainly no physiological, and perhaps no sufficient reason can be given, other than the liability of intermixing moral relations.

of marriage. Relief may be had in extreme cases by a legal recognition of actual separation, without a severance of the moral bond that forbids a new relation.[1]

[1] Among heathen peoples, ancient and modern, the marriage tie has always been loose, and divorce facile. In Christendom the reverse is generally true, influenced by the law of marriage gathered from *Genesis*, 2 : 24 ; *Matthew*, 19 : 9 ; *Mark*, 10 : 2–12 ; *Luke*, 16 : 18 ; and 20 : 27–36 ; *Romans*, 7 : 2, 3 ; 1 *Corinthians*, 7 : 10–14. The principle informing these precepts was incorporated in the Canons of the Church at an early date, and in 1562, the Council of Trent decreed marriage indissoluble from any cause. Soon, however, under the influence of the Reformation, the distinction was made between separation *a vinculo matrimonii*, or complete divorce, and separation *a mensâ et toro*, which latter, in extreme cases, the Canons allowed.

Constantine prohibited, *circa* 315, by special edict, divorce on simple consent of the parties ; and the States of Europe have ever since recognized marriage as a civil contract, and, with fluctuating severity and laxity, have restricted divorce, on grounds of civil polity.

In England, until of late, marriage was, by the Canon Law, indissoluble ; but, after the Reformation, separation *a mensâ et toro* was allowed, by decree of Ecclesiastical Court, neither party being permitted to marry again ; while complete divorce with this privilege could be granted only by special act of Parliament. Late statutes, 20, 21 Vic. c. 85, *et al.*, have made great changes. Jurisdiction in divorce cases is transferred to a special Civil Court, in which either spouse may obtain a decree of complete divorce on ground of adultery ; and judicial separation from board and couch may be secured on ground of cruelty or desertion, in which case the woman thereby becomes *femme sole* in regard of property.

In America the practice varies in different States. "In several of them no divorce is granted but by special act of the legislature, and in others the legislature itself is restricted from granting them, but it may confer the power on courts of justice. So strict and scrupulous has been the policy of South Carolina, that there is no instance in that State since the Revolution of a divorce of any kind, either by sentence of a court of justice or by act of the legislature. In all other States divorce *a vinculo* may be granted by courts of justice for adultery. In New York the jurisdiction of the courts as to absolute divorce for causes subsequent to marriage is confined to the single case of adultery ; but in most of the other States, in addition to adultery, intolerable ill-usage, or willful desertion, or unheard-of absence, or habitual drunkenness, or some of them, will authorize a decree for divorce *a vinculo* under different modifications and restrictions." — KENT, *Commentaries*, iv, 105. The laws relating to divorce have undergone many changes since the publication of these Commentaries in 1830.

§ 116. Persons of full age, and emancipated from parental authority, often do not marry for some years, or perhaps never marry. The social status of such persons is more or less abnormal according as they are more or less absolved from family connection. For the family is the basis of social organization, and since these are now but external appendages to some one, they cannot be accounted more than fractional members of society at large.[1]

Such persons are unhappily at great disadvantage in respect of moral culture. For the conditions of complete development are lacking to those destitute of the familiar objects around which the strongest and best affections of the human soul gather and grow, and whose lack it is not possible fully to compensate by other lines of moral activity. In these other lines, however, exceptional attainments are often made, commanding high respect, and rounding out a useful life.

§ 117. When the family circle is completed by the birth of children, a new and wide field is opened for the cultivation of ethical graces. Moral possibilities, which otherwise are forever latent, become patent. The potential becomes actual, and nature has not planted in vain. No man is ever wholly a man until he is a husband and a father; and, more emphatically, no woman is wholly a woman until she is a wife and mother. A babe is a pledge of love, an additional and powerful tie, a sacred trust, calling out and taxing the moral energies, and making an unlimited demand on loving service. All that is beautiful in human nature blooms under the influence of this fertilizing relation. It is easy to adore the Madonna.[2]

[1] It is at least curious to note that a prerequisite to membership in the ancient Jewish Sanhedrin was that one should be a husband and a father; perhaps because this would qualify him to be a wiser and more compassionate judge. See Bunsen, *Hippolytus*, ii, 344.

[2] It is a famous saying of Froebel: "Kommt, lasst uns unsern Kindern

The familiar care and provident rearing of children constantly exercises the domestic virtues, tending directly to the perfection of manhood and womanhood. The responsibility and difficulty are of the gravest. The culture should be dominated by the view that, in the order of nature, the child is destined to moral independence, and to membership in society. In being prepared for this, it has many and very sacred rights. Its parents are bound, as their function in the family organism, to provide for its healthful maintenance suitable to their rank in society, for its education, intellectual, moral and religious, and, in general, for its present and prospective welfare. Great laxity of restraint is likely to be ruinous; but, on the other hand, severe restrictions, a rigid molding of character, opinions, and religious creed, is hardly less to be deprecated as an injurious trespass on the right of the child to generous culture, and the free growth of its individuality.[1]

The office of brothers and sisters in this organic relation is affectionate sympathy, and mutual helpfulness, which should extend throughout life. As sons and daughters they are bound to honor father and mother by a willing and pleased obedience to their rightful authority, and by a prompt readiness to promote their welfare. Also they are bound to guard sedulously the honor of the family name, and to seek actively the advancement of the common interest.

leben. Come, let us live for, with and in our children. Then will the life of our children bring us peace and joy, then shall we begin to grow wise, to be wise." — *Education of Man*, § 42.

[1] "The feeling of community, first uniting a child with its mother, father, brothers and sisters, and resting on a higher spiritual unity, to which later is added the unmistakable discovery that father, mother, brothers, sisters, human beings in general, feel and know themselves to be in community and unity with a higher principle, with humanity, with God — this feeling of community is the very first germ, the very first beginning of all true religious spirit, of all genuine yearning for unhindered unification with the Eternal, with God." — *Idem*, § 21.

§ 118. This human institution, the family, is preëminently natural, being physically determined. Those born into it are involuntarily and inseparably its members. By its primacy it stands as the unit of society and of the State, without derogation from the distinct personality, moral status and obligation of its individual members. Yet it is a whole. Even when some part or parts are lacking, it is still a unit. It is not a logical whole, a genus, for its parts are not species or kinds of family. It is an integral whole; not collective, as a cluster of grapes, but organic, as a flower whose central organs, stamen and pistil, yield germ and seed, within a corolla. It is an individual, indivisible in itself, and separate from every other.

Less clear perhaps, but not less true, is it that a family is a single personality. The definition of a person is a being conscious of obligation. Now there is a consciousness common to all members of a family, an intelligent apprehension of moral law which is the same in each, a judgment which, under the influence of common interest, is assimilated into one, a pervading sentiment, a united impulse to effectuate a single will. The obligation of some one family as an organic whole to some one man as its benefactor, or to some other family, or to general society, is matter of familiar speech and acknowledgment, and the common consciousness of such obligation constitutes its unique personality, quite distinguishable from the peculiar personality of its several members. To this conception of its distinct personality may be added the possession of family traits in features, manners, customs, habits, and in general, of character, often sharply marked. Moreover, what wounds one member, wounds all; the honor, dignity and welfare of the whole, is in common keeping.[1]

[1] This moral solidarity is not a product of refined civilization. In rude, primitive ages it found abundant recognition; for example, in the infliction

§ 119. The individual personality of a family as an organized unit, distinct from the personality of its members, is manifest in the significant fact that it claims a life beyond the present generation. Its ancestry extending back for ages is its pride, and its posterity in an indefinite future is its hope. What it has been confers titles of honor, and what it may become excites anxious solicitude. The death of a member breaks in upon its present entirety, but does not interrupt its continuity. Only by sterility and death combined is it extinguished, and this is accounted a special loss to society, a public and private misfortune.[1]

A family of the present generation, inheriting the honor and wealth of the same family in preceding generations, recognizes its moral obligation to maintain and rightly use the trust, thus discharging a sacred debt due the dead. Also it recognizes its moral obligation to the coming generation in provision for its welfare, thus discharging a sacred debt due descendants, including those yet unborn. That one is thus bound to pay debts due the deceased and the unborn, is not fanciful sentiment, nor figurative speech, but real, literal ethics. Current expressions and approved literature recognize in many ways the obligation as especially incumbent on

of punishment due to the offense of a single member upon the whole of his family; the guilt of one, it was held, making all alike guilty. This lingers with us in the social ostracism of an innocent member of a dishonored or disreputable family. Put merit for guilt, gratitude and love for vengeance, and we have a law of the moral order holding good for all time, for the highest civilization, for the most refined moral consciousness.

[1] Witness the deification and worship of ancestry, so common among heathen peoples, ancient and modern. The law of primogeniture in England, and in most of the States of Europe, by which, the father dying intestate, his eldest son inherits the real estate, *i.e.* lands and buildings, in preference to and in exclusion of all other members of the family, clearly intends to confirm its continuity. So also the practice of entail. The preference in inheritance of males to females, found in ancient Jewish, Athenian (but not in Roman) law, and in the laws of some modern States, *e.g.* the Salic law, likewise was apparently intended to perpetuate more distinctly the family.

the family, whose individuality and personality extend through generations that come and go, yet perpetuate its organic unity.

§ 120. The foregoing considerations enable us to understand more clearly the ethical principles that regulate the holding and disposing of property.[1]

Property owned by either party at time of marriage, and that acquired afterward, is, by virtue of the marriage, the common property of the family. That either husband or wife should have property at disposal apart from and independently of the other, though often it is so arranged, contradicts the unity of the relation, drawing a line of separation and making a distinction that ought never to exist. Such an arrangement is inconsistent with that entire surrender of all the interests of life into the common keeping which the marriage bond requires; and in so far the marriage is but partial. The reserve implies a distrust that is chilling, and likely to produce a discord that is fatal. It is a withholding trespass.

Evidently, then, the family property should not be largely ventured in trade, or otherwise disposed of, without the free consent of all members, including the children, in whom also property rights are vested by birth, when they become sufficiently mature to appreciate and rightly judge the interests involved. Yet, be it remembered, that each and all should seek, by a reasonable yielding, to assimilate their views and wishes, thereby attaining a unity of will which thus becomes the will of the family.

Also it is evident that the management of the family property in detail must be left to some one member. This seems naturally to devolve upon the husband and father who, according to the usual and approved order, takes charge of

[1] See *supra*, § 38.

the family interests outside of home, and hence is best acquainted with public affairs. Because property is held and ordinary business transacted in his name, he is apt to regard himself as exclusive and irresponsible owner. This error, pervading society, stands greatly in need of correction.[1]

§ 121. Distribution by testament of the property of a family is, for like reasons, by the hand and in the name of its ostensible head; also for the reason that, preparatory to his decease, when the house band is loosed, and the family disintegrated, there is need of a special and provisory adjustment of property rights by the one to whom their care has been chiefly committed. In any such adjustment the united consensus of all members should be had, so that together with the avoidance of any actual trespass, complaint of wrong may also be forestalled.

Testamentary distribution gives rise to many difficult questions which largely occupy the courts. The fundamental principles involved are, however, sufficiently clear. A producer has a right to use and dispose of his products at will, and this will must be effective beyond his decease, else a great incentive to industry and accumulation would be lost, projects for the benefit of the coming generation would not be devised and driven, and social progress would be hindered, inasmuch as each generation would have to make a new beginning. But let it be observed that the home management and industry, its provision for rest and refreshment, its cheering influence, its trifling comforts even, are very important elements in the efficiency of the producer, and thereby enter

[1] In the United States, when the head of a family dies intestate, distribution to the survivors, is made of the property according to civil statute, and guardians of minors are appointed. There are differences, but the existence in any form of such statutes is a distinct recognition by the State that property rights in what was an undivided possession inhere in each member of a disrupted family.

into his product; so that all members of the home circle, but especially the husband and wife, are partners in business, and since they share in the producing, are entitled to share in the production, both in consuming and in disbursing. Beside this, it should be distinctly recognized that all possessions are held and managed as trusts, and their agreed testamentary distribution should be regulated accordingly. The testator is bound to provide suitably for the family, thus discharging his primary obligation as its trustee. A surplus may rightly become matter of bequest to collaterals, to friends, or to the general public, in the founding or endowing hospitals, schools, libraries, and such like benefactions, according to the best judgment of the trustee representing the family in this discharge of its alien obligations.

CHAPTER III

THE COMMUNITY

§ 122. Human beings manifest a strong disposition to gather into groups more or less permanent. In some of these population is massed, as in cities; in others it is more sparse, as in villages, hamlets, neighborhoods. Hence in any inhabited region, it is easy to point out centers of population, though the circumference be quite indefinite. Besides the gregarious instinct of the human animal, there are many rational determinants of this tendency, both economical and ethical. Every one owes his existence to progenitors and also is indebted for its continuance, for all physical means, conveniences and comforts of living, for all intellectual and moral culture, so entirely to association, more or less intimate, with his fellows, that all the interests of life, his whole welfare, is bound up with them. Strict independence is a practical impossibility.[1]

1 "La nature de l'homme le porte à vivre en société. Quelle qu'en soit la cause, le fait se manifeste en toute occasion. Partout où l'on a rencontré des hommes, ils vivaient en troupes, en herdes, en corps de nation. Peut-être est ce afin d'unir leur forces pour leur sûreté commune; peut-être afin de pourvoir plus aisément à leur besoins; toujours il est vrai qu'il est dans la nature de l'homme de se reunir en société, comme font les abeilles et plusieurs espèces d'animaux; on remarque des traits communs dans toutes ces reunions d'hommes, en quelque parti du monde qu'ils habitent." — SAY, *Cours d'Econ. Polit.*

"The impulse which leads to combination lies in the necessity of supplementing the force of the individual by that of others, without which the aims of life are not completely attainable. Here belong not merely the conceivable advantages which one receives from another, but above all the social intercourse itself, without which a really human development is inconceivable." — LOTZE, *Pract. Phil.*, § 56.

A group of people thus specially related by living in proximity is a community.[1] This is not merely a collection but a body of people; for the necessities of its members which draw them together determine at once an organic constitution.[2] Each member contributes more or less directly to the welfare of every other, and to the welfare of the whole, in which welfare he participates. The variations of function are determined by the pressure of various needs, and by the fitness of various abilities to meet them. There is a tacit consensus in the distribution of these functions; but since there is no formal and definite enactment of a constitution, the community is often spoken of as unorganized society; whereas, though not formally, yet it is essentially an organism, necessitated by the interdependence of its members.[3]

[1] "Common = public, general, usual, vulgar; Fr. from Lat. *com-*, for *cum*, with, and *munis*, complaisant, obliging, binding by obligation." — Skeat. Community, from Lat. *communitas*, fellowship, from *cum*, together with, mutually, and *munis*, ready to serve.

[2] "Quam fluctus diversi, quam mare conjuncti."

[3] "A quoi bon la société? Restez dans la nature. Soyez les sauvages. Otaïti est un paradis. Seulement, dans ce paradis on ne pense pas. Mieux vaudrait encore un enfer intelligent qu'un paradis bête. Mais non, point d'enfer. Soyons la société humaine. Plus grande que nature? Oui. Si vous n'ajoutez rien à la nature, pourquoi sortir de la nature? Alors, contentez-vous du travail comme la fourmi, et du miel comme l'abeille. Restez la bête ouvrière au lieu d'être l'intelligence reine. Si vous ajoutez quelque chose à la nature, vous serez nécessairement plus grand qu'elle; ajouter, c'est augmenter, c'est grandir. La société, c'est la nature sublimée. Je veux tout ce qui manque aux ruches, tout ce qui manque aux fourmilières, les monuments, les arts, la poésie, les héros, les génies. Porter des fardeaux éternels, ce n'est pas la loi de l'homme. Non, non, non, plus de parias, plus d'esclaves plus de forçats, plus de damnés! je veux que chacun des attributs de l'homme soit un symbole de civilisation et un patron de progrès; je veux la liberté devant l'esprit, l'égalité devant le cœur, la fraternité devant l'âme. Non! plus de joug! l'homme est fait, non pour traîner des chaînes, mais pour ouvrir des ailes. Plus d'homme reptile. Je veux la transfiguration de la larve en lépidoptère, je veux que le ver de terre se vivante, change en fleur et s'envole." — Victor Hugo, *Quatrevingt-Treize*, p. 495.

§ 123. Recur to the primary ethical principle that every one has a right to gratify his normal desires, and to this, beside, that it is his obligation not merely passively to allow their impulse, but actively to seek their gratification, and it is manifest that the fulfillment of obligation is impracticable apart from society.[1] For, no class of normal desires can properly be gratified without reference to associates; but especially the affections, which are conditioned on the presentation of sentient objects, can have no exercise in solitary life. In such life the chiefest, indeed the sole function of humanity is perverted and comes to naught. Mankind is a brotherhood, and it is only by close fraternization, only by being a man among men, that it is possible to be wholly a man. Whoever lives his life in its natural and rightful fullness is a constant recipient from his fellows of the necessary means, for which he is dependent on them, and therefore is constantly incurring an indebtedness which requires a constant reciprocal activity to repay.

These considerations forbid an ascetic life, which, under the guise of righteous self-denial, renounces invigorating enjoyment, and thus leads to such an impoverishment of spiritual power that its dues go unpaid.[2] Nor can the life of a recluse be approved, which seeks self-sufficiency in solitude and retired contemplation, or an escape from thronging ills by a timid retreat into privacy, idle ease, and indifference to the common welfare. Likewise we must condemn the life of a reserved student who, enamored of truth, withdraws from familiar intercourse, and in the scholarly seclusion of his library seeks to accumulate knowledge with no intent or thought of sharing it, and thereby promoting the well-being even of his compeers.[3] These several forms of social seques-

[1] See *supra*, §§ 25, 35. [2] See *supra*, § 77.

[3] "We are right in being enthusiastic for science only on account of the fact, partly that we discern the usefulness of its impulse for the sum-total of

tration can be approved only when they are temporary, and for the purpose of recuperation and preparation for better service in subsequent life. Thus only can they be acquitted of selfishness, and accepted as transient phases of that active life of practical benevolence which alone develops the moral dignity of true manhood.[1]

§ 124. The reciprocal obligations of the members of a community are recognized in a code of social intercourse, an unwritten common law, which prevails throughout and regulates communication. This law, like the unwritten Common Law of the courts, is a detail of rights and duties. Both systems originated in the exigencies of popular intercourse, and

human life so well as to renounce all claim to see a special application for every individual (*einzelne*) truth, and partly that the general character of truth, its consistency, and the manifoldness of the consequences that follow with certainty from a few principles, places before our eyes an actualization (*Verwirklichung*) of what we ought to attain in the moral world by our own conduct." — LOTZE, *Pract. Phil.*, § 30.

[1] Moral isolation is not in being retired, but in being selfish. One may be "Far from the madding crowd's ignoble strife," yet in a communion that braces and strengthens; and amid the turmoil of the throng, he may be apart, alone.

> "To sit on rocks, to muse o'er flood and fell,
> To slowly trace the forest's shady scene,
> Where things that own not man's dominion dwell,
> And mortal foot hath ne'er, or rarely been;
> To climb the trackless mountain all unseen,
> With the wild flock that never needs a fold;
> Alone o'er steeps and foaming falls to lean;
> This is not solitude; 'tis but to hold
> Converse with nature's charms, and view her stores unrolled.
>
> But 'midst the crowd, the hum, the shock of men,
> To hear, to see, to feel, and to possess,
> And roam along, the world's tired denizen,
> With none who bless us, none whom we can bless;
> Minions of splendour shrinking from distress!
> None that, with kindred consciousness endued,
> If we were not, would seem to smile the less
> Of all that flatter'd, follow'd, sought and sued;
> This is to be alone; this, this is solitude."
>
> — BYRON, *Childe Harold*, Canto ii, 25, 26.

by degrees have been fully developed; and both are but variations, explications and applications of the law of trespass.

The conventions of society are known as the rules of good breeding and good manners. They require comity, a proper consideration and respect for the minor rights of each other, a delicate regard for one another's wishes, feelings and peculiarities, a prompt attention to wants, their serviceable anticipation, a complaisant readiness in assistance; this is politeness. In the denser portions of a community there is constant call for its exercise, so that people, even those of otherwise indifferent culture, become by attrition polished, that is, polite; they are civil, and the higher ranks are courteous or courtly in address. To this must be added the special code of social etiquette observed in refined circles, which descends to minutiæ, and is so rigid in its required decorum that an infraction of it is sometimes less readily condoned than vice. All such conventionalities arise from the union or consolidation of interests and responsibilities, and betoken the solidarity of the community.[1]

§ 125. A prime condition of the wholesomeness of a community is the truthfulness of its members. The obligation to be truthful in both word and deed is clear. Every one has a right to certain services from his fellow-man, and a usually just and sometimes very important claim is for an opinion, judgment, information, direction, advice, sympathy. If these be reserved when due, it is a trespass, a restriction of a rightful liberty to use and profit by them. Still greater

1 "Nicht die Sittlichkeit regiert die Welt, sondern eine verhärtete Form derselben: die Sitte. Wie die Welt nun einmal geworden ist, verzeiht sie eher eine Verletzung der Sittlichkeit als eine Verletzung der Sitte. Wohl den Zeiten und den Völkern, in denen Sitte und Sittlichkeit noch Eins ist. Aller Kampf dreht sich darum, den Widerspruch dieser Beiden aufzuheben und die erstarrte Form der Sitte wiederum für die innere Sittlichkeit flüssig zu machen." — AUERBACH.

is the trespass, if they be misstated, thereby misinforming and misleading the recipient, for then his trust is violated, his confidence outraged. If the claim be allowed, the expression by word or deed must be true to the thought.[1]

But the claim is not always just, not always to be allowed. We are not always bound to speak; often it is right and wise to be silent. Nor, if we speak, are we always bound to tell the whole truth; in which case the extent of the reserve is matter for conscientious judgment, having care not to mislead by the partial statement. This right of private reserve is superseded by the courts in the interest of society at large, and the witness required to tell the whole truth without reserve.

Whether deceit in any form is ever justifiable is a question that has been discussed for centuries, and is still unsettled. On the one hand it is affirmed that deceit is in its very nature irreconcilable with the eternal principles of right and justice; and on the other hand it is asserted that certain emergencies may justify a departure from ordinary rules of conduct, and render deceit not only justifiable but obligatory. This question of the ages is not to be answered in a few words. We must be content here with saying: first, that a lie is never justifiable; secondly, that not every deception is to be accounted a lie, *e.g.*, the myth of Santa Claus; and thirdly, if the definition of a deception be allowed wider scope than the definition of a lie, yet is a deception so rarely right and duty that every one should practice habitual truthfulness, deviating from it with great hesitation, and only when the justification is beyond all question.[2]

[1] See *Elements of Psychology*, §§ 218, 251. In north China, a request for information is usually introduced by the polite phrase: "May I borrow your light?"

[2] See Trumbull's *A Lie Never Justifiable;* especially ch. vi, which cites many authorities ancient and modern, heathen and Christian, *pro* and *contra.* To these add Kant, who, in a tractate *Über ein vermeintes Recht aus Men-*

§ 126. The general obligation to be truthful takes a number of specific forms. Beside this duty in the commonplace talking of familiar intercourse, we place the formal tie of a promise, written, oral, or indirectly implied in mere behavior. The obligation in such case is strengthened by the fact that the promisee, in reliance on the faithfulness of the promiser, may in his life-conduct order important matters with reference to the promise, and suffer injury or even disaster should it fail. A promise given under an essential misunderstanding, or, since we cannot accurately forecast the future, in case the duty of its observance is superseded by some higher unforeseen duty with which it is radically inconsistent, is null. This does not endorse the loose aphorism that a bad promise is better broken than kept; for, if its badness work merely the private personal injury of the promiser, unless ruinous in an intolerable extreme, he is not thereby discharged of the obligation. We commend him that sweareth to his own hurt, and changeth not. A promise made under compulsion cannot be claimed by the promisee, yet it measurably binds the promiser because of respect for his word. In no case, however, is a promise obligatory if the fulfillment be criminal, for it can never be duty to commit crime.

A contract or covenant differs from a simple promise in that it implies an exchange of services, and reciprocal obligation.[1] It is usually under the protection of special statute, an outcome of the moral element, of that mutual trust which is the basis of social order. Contracts are of endless variety,

schenliebe zu lügen (Auflage R. und S. vii, S. 295) pronounces strongly for the negative. A translation of this tractate is appended to Abbott's *Kant's Theory of Ethics*, p. 431 *sq.* *Cf.* Lotze, *Grundzüge*, § 45.

[1] "A contract is an agreement, upon sufficient consideration, to do or not to do a particular thing." — Blackstone, *Commentaries, etc.*, bk. ii, p. 442. The Constitution of the United States, Article i, Section 10, forbids any State to enact a "law impairing the obligation of contracts," which clause has given rise to a vast deal of litigation.

and affect nearly every detail of private and public life; and if their binding character were not fully recognized there would be no security in affairs. A deception practiced by either party in making a contract invalidates it; but both parties must abide the consequences of carelessness, thoughtlessness, or stupidity.

Common honesty in trade, and in business dealings generally, is another form of truthfulness. Exchange of services, of goods, and of other forms of property, has the advantage of being estimated numerically in the medium of exchange, money, which gives exactness to the mutual obligation, and sharply expresses its violation. The interests involved in such transactions are so widely interlaced that fraud excites general indignation and reprobation. There is hardly any form of trespass that incurs such deep and lasting disgrace as dishonesty.[1]

§ 127. The membership of an organized community does not consist in merely so many men, women and children, standing singly as discrete elements coalescing into a concrete body. A strong tendency to such individualism has marked the nineteenth century, in France, in England, and even more positively in the United States. It cries out for

[1] It is worth noting that honor and honesty are, etymologically, the same word. *Cf.* Cicero's usage of *honestas*. "The advantage to mankind," says Mill, "of being able to trust one another, penetrates into every crevice and cranny of human life; the economical is perhaps the smallest part of it, yet even this is incalculable." — *Polit. Econ.*, bk. i, ch. 7, § 5. Says Professor James: "A social organism of any sort whatever, large or small, is what it is because each member proceeds to his own duty with a trust that the other members will simultaneously do theirs. Wherever a desired result is achieved by the coöperation of many independent persons, its existence as a fact is a pure consequence of the precursive faith in one another of those immediately concerned. A government, an army, a commercial system, a ship, a college, an athletic team, all exist on this condition, without which not only is nothing achieved, but nothing is ever attempted." — *The Will to Believe*, p. 24

liberty, equality, fraternity, and demands that creed, race, and even sex shall be ignored on the forum, at the polls, and in the schools. Now, while each individual man and woman is a distinguishable member of society, it should be observed, in opposition to individualism, that each is primarily a member of a family whereby he or she is socialized, that the family is properly the organized and organizing unit of society, and that a community consists fundamentally of associated families. This incidentally appears in the fact that the social standing of the individual is in general determined by that of his family, above which it is difficult to rise, and below which one rarely falls. The question, What is he? asks after his vocation; but, Who is he? asks after his family.

A variety of minor organizations are usually formed by voluntary association, which also are integrant members; as, social or literary clubs, and benevolent societies. Beside these are business firms of two or more members, stock companies, coöperative associations, and guilds or trade-unions. Such combinations for more effective achievement are often legally incorporated, and usually have a contract or articles of agreement, or a written organic law or constitution, stating the ends they seek and the means, and defining the functions of members and officers as duties; the variations in duty arising from a specializing of functions so as to constitute an efficient coöperative whole. A special class of subordinate organisms is seen in the schools, which also usually have a formal constitution and laws defining the duties of members, official and unofficial. They are instituted specially to meet the debt due the next generation, are essential to the perpetuity rather than to the maintenance of society, and form a bond, a historical enchainment, between its present and its future.

Each of the foregoing minor organizations is itself a mem-

ber of the community, having, as already said of the family, an individual personality distinguishable from the individual personality of its components.[1] Moreover, although the bounds of any single community be ill defined, still communities are recognized as more or less distinct from one another. Now each of these as an organic whole has not only obligations to its various members, but also to neighboring communities with which it is in communication. Thus the community as a whole is an individual, a personality, with a conscience, and a moral judgment in the consensus of its members, which passes upon its own character and conduct, upon that of its several members, and upon that of affiliated communities.

§ 128. The organic nature of a community distributing various functions or offices and consequent duties among its members, is clearly seen in its division of labor. The necessities of life necessitate labor, but no one by his own labor alone can surely supply even these, much less can he produce the many requisites to comfortable living. The civilized man has many desires or wants that have become so habitual as to be classed as necessaries.[2] For the full gratification of these he is dependent on the productive labor of his fellows. Hence the pressure of such wants molds the community into an organism, in which each works for every other, and they for him; also he labors for the welfare of the whole, and the end of the whole is the welfare of each. Thus a simple community will comprise a shoemaker, a tailor, a carpenter, a blacksmith, a shopkeeper, a printer, a doctor, a lawyer, a schoolmaster, and a curate. These exchange services or

[1] See *supra*, § 118.

[2] Said Voltaire: "Le superflu, c'est le vrai nécessaire." This paradox was revived by Charles Boyle, saying: "Only give me the luxuries of life, and I will dispense with the necessaries."

products, and a variety of duties is a consequence of the organization.

A discussion of division of labor is not proper to a treatise on Ethics, but belongs rather to the theory of Economics.[1] It is appropriate, however, to observe that, in addition to its economical advantage, it has the moral advantage of giving rise to the common virtues of honesty, industry, and respect for order, and to a sense of personal responsibility, the responsibility of each worker to his fellows and to the community at large. Besides, it originates the conception of a vocation, a calling, and establishes each worker in a position, changed from a mere man into a member, whereby he is no longer just like all others, but assumes a place and mark specially his own.[2] Extreme division of labor, however, depresses the intellectual status of the laborer, narrows his spiritual horizon, and assimilates his activity to that of an automatic mechanism.

The distribution of functions brings about social classification. Mere laborers are distinguished from farmers and mechanics, and these from skilled artisans, and these again from artists and the professional class whose work is mostly intellectual. Greater honor always attaches to the finer, and less to the coarser kinds of labor. This has the wholesome effect of inducing effort to rise into what is accounted a higher social rank, and is thus a powerful stimulus to civilization. But here also an abatement must be made. Classes strongly marked tend to become castes, in which form their

[1] See *supra*, § 76, note.

[2] The familiar word vocation implies Providential superintendence and appointment to special service. The reality of this is perhaps not commonly recognized. Still "die sittliche Weihe des Berufs," or the moral consecration of a calling, has great influence in the regulation of society. It acts like "the expulsive power of a new affection," ejecting all that is inconsistent and unworthy, and assimilating all that is concordant and befitting in a new consecration.

wholesome effect disappears, ambitious effort is paralyzed, improvement discouraged, and civilization restrained.

§ 129. In a prosperous community, one whose wealth in general is increasing, capital or the wealth destined to reproductive consumption tends to accumulate in the hands of those more intelligently industrious, and thereby a special class is formed, the capitalists. These are marked off from the wage-earners whom they employ in their large and enlarging industrial enterprises. Now the economical advantages of large capital engaged in extensive and systematic industry are obvious, yet just because of the greater uniformity, abundance and cheapness of its products, the ability of the small free crafts to subsist is curtailed, which reduces the larger portion of the community to the position of wage-earners under the mastership of the capitalists, on whom their livelihood depends. The evils of this division of society, and of this enforced relation, have become familiar in what are known as labor troubles. The grasping selfishness of moneyed power induces oppression; and the sense of injustice, and the dissatisfaction with the unequal distribution of the amenities of life, induce violent revolt.

Certain remedial schemes, under the generic name of socialism, have attained notoriety and many advocates. They propose a reorganization of society, giving it a more definite and compact solidarity. In general, they would abolish competition in labor, wages, and particular or private ownership of property, especially of land; substituting work under the stimulus of public spirit, an equal distribution of products, and a common ownership and disposition of all fixed property by closely organized society. A still more radical scheme of reorganization, called communism, proposes to abolish also the family, substituting for domestic relations and the government of parental authority, temporary unions, and a com-

munistic care for the nurture and education of offspring. Attempts to maintain such schemes in practical operation have hitherto failed.

A discussion of socialism as to its economical value, and even as to its ethical worth, must be passed by with the general remark that the evils of society as actually constituted arise, not from contrived injustice, but from a lack of moral equipoise. In the ideal community, which moral culture seeks to attain, there would be no tolerated trespass upon the rights of even the humblest member; and in the absence of just cause of revolt, all would be content in the station determined by merit, by the relative value of services. Until this Utopia be realized, a more intelligent apprehension of the inseparable interests of capital and labor would conduce to greater harmony, to mutual respect, and to a wider recognition of reciprocal rights.[1] Meantime, remedy against oppression by either party should be sought, not in turbulence and disorder, but in appeal to that which is set for the guardianship of rights, to the strong arm of the State.

[1] "Voici une sage et belle devise: Prendre pour point de départ et pour point d'appui de tout progrès le devoir du rich plutôt que le droit des pauvres; de sort que l'accord dût pu se faire entre les deux adversaires, à l'aide de quelque concessions, en somme assez peu douloureuses." — *Revue des deux Mondes*, 1883, p. 725.

CHAPTER IV

THE STATE

§ 130. It is essential to any widely associated life of men that there should be definite and effective provision for the protection of rights. For in every community evil-doers, or at least doers disposed to trespass, are so many, active and strong, that its several members are not competent, without combination, to maintain intact their rightful liberties. Moreover, certain important interests of the total community are best served by concerted action, indeed many cannot otherwise be served. To attain these two general ends, the safeguard of rights and the advancement of the common weal, the one protecting, the other promoting, is the purpose of the State.[1]

[1] "The society of many families, instituted for mutual and lasting advantage, is called a village, κώμη. . . . When many villages join themselves perfectly together into one society, that society is a State, πόλις, and contains in itself, if I may so speak, the perfection of independence. It is first founded that men may live, and continued that they may live happily [*i.e.*, in the perfect practice of virtuous energies. — bk. vii, ch. 8]. For which reason every State is the work of nature, since the first social ties are such; for to this they all tend as to an end, and the nature of a thing is judged by its tendency. For what every being is in its perfect state, that certainly is the nature of that being, whether it be a man, a horse, or a house. Besides, its own final cause and its end must be the perfection of any thing; but a government complete in itself constitutes a final cause and what is best. Hence it is evident, that a State is one of the works of nature, and that man is naturally a political animal, πολιτικὸν ζῷον, and that whosoever is naturally, and not accidentally, unfit for society, ἄπολις, must be either inferior or superior to man; just as the person reviled in Homer: 'No tribe, nor State, nor home hath he.' For he whose nature is such as this, must needs be a lover of strife, and as solitary as a bird of prey." — ARISTOTLE, *Politica*, bk. i, ch. 2.

The established State occupies a definite territory. It embraces several, perhaps many distinguishable communities usually of one race and language, having common manners, customs and traditions. It consists primarily of the whole body of people, the body politic, including all officers of government; but the term is often, secondarily, limited to the official class, the sovereign body having supreme power held in trust for the common weal, which class, however, is more properly termed the government.[1]

It is not within the scope of this treatise to discuss the relative merits of different forms of state government, nor to trace the historical evolution of the State through the abuses, turmoils, and civil wars which, because of the imperfect or erroneous views and the selfish ambition of statesmen and rulers, have embarrassed its development. We shall attempt no more than to sketch the essential features of its constitution, and to indicate its exclusively ethical basis, its thorough-going ethical character, and the varieties of moral obligation imposed on its members by its specific and peculiar organization.

§ 131. Governments are distinguished as monarchic, aristocratic or republican, and democratic. Some combine elements of each of these principal forms; as, Great Britain. No exclusive preference can be given to any one form. That is best which best accords with the historical traditions and habits of its subjects, is suitable to their grade of intellectual and ethical culture, and is administered in the interest of the public rather than of the rulers.[2]

[1] When a number of States, whose people as a body come of a common stock, *natus*, are confederated under a general government, this is properly a Nation; as, the German Nation, especially prior to the unification in 1870, and the nameless Nation formed by the United States. When a number of States of distinct nationality are united under a common government, this is properly an Empire; as, the Roman Empire, and the British Empire.

[2] The very best form of government, according to Aristotle, is the aris-

Every well-ordered State, whatever be its form of government, has essentially a Constitution, unwritten or written, positively decreed, and loyally observed by its officials and citizens.[1] The Constitution is the fundamental organic law, organizing the body politic. It has three essential features

tocracy of intellectual eminence and moral worth, whether these qualities be found, in their highest development, in a few persons, or only in one.

The Virginia Bill of Rights, § 3, says: "Of all the various modes and forms of government, that is best, which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of mal-administration."

"A government is to be judged," says Mill, "by its action upon men, and by its action upon things; by what it makes the citizens, and what it does for them; its tendency to improve or deteriorate the people themselves, and the goodness or badness of the work it performs for them, and by means of them." — *Representative Government*, p. 43.

[1] England has no formally enacted and written Constitution. The government, originally an absolute monarchy, has been reduced to a limited monarchy by *Magna Charta* and numerous subsequent Acts of Parliament, which stand in lieu of a formal Constitution, and insure to the people republican liberty.

The Constitution of the United States is a written and formally enacted document. Its preamble is: "We the People of the United States, in order to form a more perfect Union, establish Justice, insure domestic Tranquillity, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution for the United States of America." Thus is declared the multiple end, essentially a duplicate, to protect and to promote welfare. The articles which follow enact the specific means for attaining the end, reciting the functions or duties, with limitations, of the various officers of the government.

In a republican government, whose legitimate procedures are determined ultimately by the will of the majority, the Constitution is an ægis for the minority, shielding it from the caprice of popular whims. In general, it is protective of citizens from the tyranny of magistrates. "The powers must be administered by men in whom, like others, the individual are stronger than the social feelings. And hence, the powers vested in them to prevent injustice and oppression on the part of others, will, if left unguarded, be by them converted into instruments to oppress the rest of the community. That by which this is prevented, by whatever name called, is what is meant by *constitution*, in its most comprehensive sense, when applied to government." — Calhoun, *A Disquisition on Government*, p. 7.

arising from the very nature of the State, the legislative, the judicial, the executive. The functions of the three are sometimes embodied in one person; as, an absolute monarch. In many cases they are irregularly distributed to a number of persons; but the historical trend is clearly to separate them as distinct departments intrusted to a distinct personnel; as, in each of the States of our Union, and in the Federal whole.

The function of the Legislature is to enact statutory laws within the limits and in pursuance of the organic law, the Constitution. As a necessary corollary it has authority to affix penalties to these laws to insure their observance, and power to lay and collect taxes for the support of the government, and for the execution of its measures.[1]

The function of the Judiciary is to sit in judgment on the constitutionality of the legislated statutes, to interpret their application, to sanction and decree the penalty for violation. When not otherwise directed by statute, the inferior courts proceed in accord either with the Roman or Civil Law, as in the States of continental Europe, or with the English Common Law, which has been adopted as the basis of jural rights in the United States.[2]

[1] Legislation for the general welfare is to be distinguished from legislation for the welfare of individuals, which is favoritism, or to benefit some distinct social group, which is class legislation. These are illegitimate.

[2] Except in Louisiana, where the Napoleonic Code, a modification of the Justinian, is recognized. For Roman or Civil Law, see *supra*, § 47, note. The English or Common Law, *lex non scripta*, derives its authority from long usage or established custom, and has been immemorially received and recognized by the English tribunals. The historical source of this system cannot be traced. The origin of the Common Law, says Lord Hale, is as undiscoverable as the head of the Nile; which is true historically, but philosophically its origin in human rights is easily discerned. Its settled rules and principles have not been authoritatively codified; they are found only in the records of courts, and reports of juridical decisions. Statute Law, *lex scripta*, is a body of laws or rules of action prescribed or enacted by the legislative power, providing for specific and exceptive cases, and promulgated and recorded in writing.

The function of the Executive is to enforce the laws and carry out the measures enacted by the Legislature. The execution of laws respecting crime, and of those respecting property rights, is intrusted to the inferior courts with their police and prison auxiliaries, backed by the superior courts, and by the chief executive, be he governor, or president, or king. Measures for the public weal, as the coinage of money, the care and disbursement of the public funds, the system of public education, the postal system, the improvement of harbors and waterways, the making of treaties, and many others, are carried into effect by this branch of the government. Also the chief executive is commander in chief of the army and navy, wherewith to insure domestic tranquillity, and the common defense against foreign aggression, invasion, or other form of trespass.[1]

§ 132. Now be it observed that the State is a complete, authoritative and powerful organization. Its foundation is on human rights, its superstructure is a fortress against trespass, a lodgment of justice, an abode of public duty and patriotic service. The structure is not new; for the human race, so long as it has existed, has been busied in building, remodeling, repairing, improving, and maintaining in different forms, through all the vicissitudes of history, this eminently ethical institution.

[1] "What constitutes a State?
Not high-raised battlement or labored mound,
Thick wall or moated gate;
Not cities proud with spires and turrets crowned;
Not bays and broad-armed ports,
Where, laughing at the storm, rich navies ride;
Nor starred and spangled courts,
Where low-browed baseness wafts perfume to pride.
No; men, high-minded men,
With powers as far above dull brutes endued
In forest, brake, or den,
As brutes excel cold rocks and brambles rude;
Men, who their duties know,
And know their rights, and, knowing, dare maintain."
—Sir William Jones.

Recalling the definition of an organism, that each member is at once means and end for every other, and the whole for each and each for the whole, we observe: first, that each citizen in his action as such, as in voting, or paying a tax, or serving on a jury or in the army, and likewise each officer of any department in exercising his special function, is thereby expending energy as a means for the profit, directly or remotely, of every other individual member of the State; secondly, that in so far as each member is profited thereby, he is an end; thirdly, that the whole as a systematized means finds its end in guarding and promoting the liberty, privileges, rights and property of each individual member separately taken; and fourthly, that it is the function of each officer and citizen to become a means whereby to maintain the integrity and efficiency of the State in all its departments as an end. In ancient times this last relation was emphasized, the people are for the State; as in the Roman Constitution, and in the Spartan Constitution so greatly admired by Aristotle. In modern times the reverse relation is emphasized, the State is for the people; as in the Virginia Bill of Rights, which has been generally accepted as their *Magna Charta* by the United States.[1] The right relation, however, between the governing and the governed is one of constant reciprocity. The mutual obligations are dissimilar, but in delicate and admirable equipoise.[2]

Moreover, in observing that the ends in every view are the preventing of trespass and the promoting of welfare, it is evident that the *raison d'être* of the organization and its informing elements are strictly ethical. It would be easy to

[1] See *supra*, § 82, note; and *infra*, § 146, note.

[2] A mere allusion may be permitted to the famous old Roman fable of "The Belly and the Members," as told by Menenius Agrippa in the early days of the city. Livy, ii, 32. The analogy illustrates a profound truth. See 1 *Corinthians*, 12:14-26. Also *supra*, § 109, note.

treat in detail of the duties of citizens to the State, and of the duties of the State to citizens, showing them to be strictly and exclusively moral obligations of high order, all coming under the law of trespass as prohibitions or as requisitions; and it is well worth repeating that all laws of civil government are amplifications and specifications of the law of trespass.[1] The Legislature originates no law absolutely. Having discovered certain rights unguarded or in abeyance, it is obligated to enact specific laws to meet the specific cases; and these laws derive their authority ultimately, not from the enacting body, nor from the whole people whom it represents, but from the fundamental imperative principle of right and justice, the moral law.[2]

§ 133. Mention has already been made of the strong tendency in recent days to individualism, of the disposition to lay stress upon the individual personality of each man and woman, slighting the unity of society in favor of its disparate plurality.[3] It is evidently a reaction against the centralizing tendency of former times, which regarded the State as comprised in one man,[4] or in one set of men, and all others as fused to a mass whose sole relation to the state was subservience. Both views are exaggerations, between

[1] See *supra*, § 65.

[2] "For even Tarquin had the light of reason deduced from the nature of things, which incites to good actions and dissuades from evil ones; and which does not begin for the first time to be a law when it is drawn up in writing, but from the first moment that it exists; and its existence is coeval with the divine mind. Therefore the true and supreme law, whose commands and prohibitions are equally authoritative, is the right reason of the sovereign Deity." — CICERO, *Laws*, bk. ii, ch. 4.

"Law in general," says Montesquieu, "is human reason, inasmuch as it governs all the inhabitants of the earth; the political and civil laws of each nation ought to be the particular cases in which human reason is applied." — *L'Esprit des Lois*, Tome ii, ch. 3.

[3] See *supra*, § 127.

[4] Said Louis XIV: "L'état! C'est moi."

which lies the truth. Both violate the organic character of the State, the latter excessively integrating, the former disintegrating.

Against individualism we point out that the State is not an aggregate of men and women, nor are individual men and women its originating units. The unit of the State is the family.[1] As a city is composed of houses, so is a State of homes. The representative head of a family judges and acts for it in uniting with others to organize, or in the far more usual case, to conduct the affairs of the already organized State. To him alone is properly committed the right of suffrage, as the one best capable of guarding and promoting all interests outside the domestic sphere.[2] It has been wisely said that the two pillars upon which the whole structure of the State reposes, are the sanctity of the marriage relation and that of the judicial oath.[3] Should a blind Samson bow

[1] "It is clear," says Aristotle, "that a State is not a mere society, having a common place, established for the prevention of crime and for the sake of exchange. These are conditions without which a State cannot exist; but all of them together do not constitute a State, which is a community of well-being in families and in aggregations of families called villages or communes, for the sake of a perfect and self-sufficing life." — *Politica*, bk. iii, ch. 9. He distributes society as follows: οἶκος, a house, home, or family; κώμη, a village, neighborhood, or community; πόλις, a city, municipality, or State. — *Idem*, bk. i, ch. 2.

[2] That bachelors of twenty-one or more years of age, notwithstanding their incomplete social status, are admitted to citizenship, is a concession to the prospect of their becoming heads of families, and to their usefulness in public affairs; *e.g.*, in the army. A sharp line of franchise is necessary; it is best furnished primarily by sex and age. See *supra*, §§ 114 (3), 116. Wisdom from experience dictates there should be also educational and property qualifications for franchise. Its extension to ignorant paupers, especially to those of other races and nationalities, has always proved disastrous. The presence in the State of a proletariat incapable of a voice in its affairs, should be recognized as unavoidable; so that it is not the total people, but only a selected portion that rules, the portion which most contributes to the consistence of society, and therefore is privileged to represent it.

[3] For 'oath' we would substitute the more general 'truth,' inspiring trust; see *supra*, § 125. Aristotle, in *Politica*, teaches that human society

himself on these, the whole edifice would fall with disaster to ruins.[1]

The State is thus constituted primarily of a congeries of families organized into the larger whole. But beside these are many other organizations holding membership in the State, to whom protection is due; as, business firms, stock companies, and corporations generally, including incorporated towns and cities. These are endowed by the State with large powers, and thus become subordinate municipalities, each *imperium in imperio*.[2] Also each department of the State, and each of its subdivisions, as a court, an army, is itself a subsidiary organism.

can be resolved into the two ultimate elements, sexual relation and private property. Upon these the State is founded. The first is necessary for its continuance, and both for its welfare. His recognition of private property as a twin pillar, rather than merely a buttress, of civic organization, is more likely to be apprehended and approved in modern times.

[1] "In *Troilus and Cressida*, Shakespeare has indicated the deep moral relation of the family and the nation, and its significance in the story of Troy. The war had its origin in the violation of the purity of marriage life, and it was this which involved the city in destruction. The doom which overtakes Troilus and Cressida is the reflex borne on through the years, and on to the close of the city, of the moral judgment upon Paris and Helen. There is an expression not only in the catastrophe, but through the whole drama, of the organic and moral relation of the family and the State." — MULFORD, *The Nation*, p. 282. See *supra*, § 82, note. Thus it teaches that the natural and moral consequence of the disrupted family is the disrupted State. What the wise Ulysses therein says of the State, may be applied to the drama itself:

> "The providence that's in a watchful State
> Knows almost every grain of Plutus' gold,
> Finds bottom in th' uncomprehensive deeps,
> Keeps pace with thought, and almost, like the gods,
> Does thoughts unveil in their dumb cradles.
> There is a mystery — with whom relation
> Durst never meddle — in the soul of State,
> Which hath an operation more divine
> Than breath, or pen, can give expressure to."
>
> — Act iii, sc. 3, l. 196 *sq.*

[2] On the social and moral effects of the affranchisement of the cities, see Guizot, *History of Civilization*, vol. i, Lec. 7.

§ 134. The State as an organized whole, while distinguished by special characteristics, has features resembling those of its elementary and subsidiary members. It is logically indivisible in itself, an individual. Its subdivisions are not kinds, but departments, into which it is logically severed. As a self-subsisting individual, it has a life whose beginning is sometimes out of sight in remote antiquity, as that of Greece; and whose continuity does not depend on that of its several members. We are born into it, we live within it, we die out from it; we are but its transient accidents. A man looks forward to his end, and makes provision for it by testament; a State, looking forward with expectation of indefinite continuity, makes no provision for cessation, which, indeed, as with Poland, rarely occurs.[1]

Moreover, a State is a personality. It has an intelligence and a culture of its own, and it has a will of its own. Also it has a conscience of its own.[2] Often it incurs debt, and with unconstrained honesty meets its obligation. If it fail, it is dishonored and disgraced before the world, and causes

[1] "Debet enim constituta sic esse civitas, ut æterna sit." — Cicero, *De Republica*, bk. iii, ch. 23, § 34. "It is not composed of its present occupants alone, but it embraces those who are, and have been, and shall be. There is in it the continuity of the generations, it reaches backward to the fathers and onward to the children, and its relation is manifest in its reverence for the one and its hope for the other. . . . The work of the individual is brief, and in its isolation would be almost vain, but in the continuity of the nation it is inwrought in the longer social development. Thus, also, a single generation, in its furthest advance, achieves but little in comparison with the long line of the generations in the nation, and if there is laid on any the necessity of battle, still the holiest triumph is that in which the life of the nation in its continuity is maintained." — Mulford, *The Nation*, pp. 6, 9.

[2] "The conception of the magistracy is significant to a certain extent of the common conscience of the people, which is made thereby to confront the changeable will of the individuals, precisely as within the spirit of the individual the consciousness of moral laws that are universally binding confronts the momentary frames of mind." — Lotze, *Practical Philosophy*, § 63.

guilty shame in every citizen, though he himself be blameless.[1] Sometimes States commit crime as States, and are punished by other States, or by ordinary providence. Usually they are very jealous of national honor, and an offense arouses national indignation.[2]

[1] One generation in a State incurs debts to be paid by subsequent generations, and these accept the burden without question; as, war debts, bonds issued for improvements, and the like. The historical enchainment is also seen in the provision by law for general public instruction, which recognizes a debt due the coming generation. This obligation of the State is felt to be so weighty that not only in many modern but in some ancient States, as in early Greece, compulsory education has been adopted; see Plato, *Crito*, 50d, and 51c, e, Step.; *cf.* Aristotle, *Nic. Eth.*, bk. x, ch. 9, §§ 7, 13, 14, who in this last place says: "It would be best that the State should pay attention to education, and on right principles, and that it should have power to enforce it; but if neglected as a public measure, it would seem to be the duty of every individual to contribute to the virtue of his children and friends, or at least to make this his deliberate purpose."

"The State," says Burke, "ought not to be considered as nothing better than a partnership agreement in a trade of pepper, and coffee, calico or tobacco, to be taken up for a little temporary interest, and to be dissolved by the fancy of the parties. It is to be looked on with other reverence, because it is not a partnership in things subservient to the gross animal existence of a temporary and perishable nature. It is a partnership in all science, a partnership in all art, a partnership in every virtue and in all perfection. As the ends of such a partnership cannot be obtained in many generations, it becomes a partnership not only between those who are living, but between those who are living and those who are dead and those who are to be born. Each contract of each particular State is a clause in the great primeval contract of eternal society, linking the lower with the higher natures, connecting the visible and the invisible world according to a fixed compact sanctioned by the inviolable oath which holds all physical and all moral natures each in their appropriate place." — *Reflexions on the Revolution in France*, Select Works edited by Payne, Clarendon Press, vol. ii, pp. 113, 114.

[2] "The State is bound," says the Bishop of Peterborough, Eng., "by precisely the same morality that binds the individual; for morality is not a duty of positive, but of natural obligation, and is binding therefore on all men under all possible circumstances. The State may not, any more than the individual may, act immorally in the discharge of its trust. As he may not lie or steal for his wards, so neither may the State. It may not, for instance, in the interests of its citizens, plunder the property of other States,

Also this distinct individual personality is manifest in the familiar recognition of national calamities, national prosperity, national blessing, and national thanksgiving; all these being clearly distinguished from what befalls this and that man, or this and that family. Withal there is a national character, as seen by contrast of the English, French, and Spanish peoples, more or less common to the individual citizens, but attributed to the nationality rather than to the man. It is only in a clear recognition of the distinct and unique personality of the State that a full and correct conception can be had of civic interest, of common welfare, and of public obligation.[1]

§ 135. Let us here give a passing glance at the great variety of duties devolving upon a man because of his membership in a variety of organizations, each involving a special class or series of obligations. First as a member of a family, whose name he bears, he has peculiar obligations to each of

or lie to them, or take unfair advantage of them in any way. Similarly in all its dealings with its own subjects it must be scrupulously and equally just. But this is a natural and not a distinctively Christian obligation. Morality and justice were not created, nor even revealed, by Christ; they existed, and were known to exist, before the giving of the Sermon on the Mount, and would have continued to exist had that discourse never been spoken, or had He who spoke it never appeared among men." — *Government and the Sermon on the Mount.*

[1] Much that is here said of the State may be, indeed has been already, said of the family; *supra*, §§ 118, 119; *cf.* § 127. It was perhaps the intimate relation of the family and the State that gave rise to the paternal theory: As is a father to his children, so is a ruler to his subject. In history, since the patriarchs, we find paternalism affected by kings and magistrates generally. But this is not the doctrine of modern civics. The State is an organization *sui generis*, not patterned after the family, or any other organized body. See *supra*, § 109, note.

Furthermore, the theory, promulgated by Rousseau in his famous *Du Contrat social, ou Principes du Droit politique*, which attributes the origin of the State to a social contract binding in perpetuity, has not survived the French Revolution.

the other members and to the whole. Then as a member of polite society, as a business man in the market, on change or in professional relations, as one of a club, or company, or association, or church, he enters into many varied relations; and, since obligation is founded on relation, these many varied relations determine, not only a multiplication but also a diversity, in kind and degree, of obligations. No man comprehends life until he is made to see by how many organic filaments he is bound to his fellows; how utterly impossible it is for him to separate his interests and his fortunes from theirs; in how many ways the welfare of those who are round about him depends upon the working, in due manner and measure, of that part of the organism which he occupies.

With membership in the State, whether as a citizen simply or as an official also, arises another distinct series of obligations, often of a very exacting and absorbing character.[1] Upon the sincere discharge of these by rulers and subjects depend the health and strength, the wholesome welfare, of the body politic. No merely perfunctory conduct, no display of avowed patriotism, can replace genuine civic virtue.[2]

[1] The relations and consequent obligations in the family and in the State are alike in this, that they are both involuntary and indissoluble. A man becomes a member by birth, and finds himself already under bonds. Consent is not asked. There is an important sense in which it is true that States "derive their just powers from the consent of the governed" (*Declaration of Independence*, postulate), and that "all power is vested in, and consequently derived from the people" (*Virginia Bill of Rights*, § 2); but this does not apply to the individual man. If dissatisfied, he may transfer his allegiance, removing himself and his effects, but this is merely an exchange, and not a dissolution of bonds.

[2] It was Doctor Johnson, I believe, who said: "Patriotism! the last refuge of a scoundrel."

Oliver Cromwell said to the men of England: "You glory in the ditch which guards your shores, but I tell you that your ditch will not save you, if you do not reform yourselves."

Says the *Virginia Bill of Rights*, § 15: "No free government, or the blessing of liberty, can be preserved to any people, but by a firm adherence

It is sorrowful to observe that public duties are ordinarily performed from dread of penalty or hope of reward, or perhaps from the higher motive of respect for the law. But in extraordinary junctures, in crises, in war, the service rendered, even when enforced, is often loving service, the compulsory is lost in the voluntary, and the dormant good-will of the people arouses to free and devoted exercise. This loving service of the State is the noble affection of true patriotism.

§ 136. What is the justification of legal punishment? What is the ground on which rests the acknowledged right of society organized as a State to deprive a member offending against its laws of his property, his liberty, his life? What is the warrant? This grave question has been variously answered. It is the right of the stronger, the combined force of many against one, the right of might, say some. It is the right of vengeance, of revenge for injury, transferred from the sufferer to the more capable and effective State, say others. Yet others say, in lofty words, the dignity and authority of the law must be vindicated; the broken law must have its integrity restored, must be made whole again, rendered holy, sanctified, reconsecrated in the eyes of all before whom it has been violated, and this is the end of penalty. Let us seek firmer ground, some more rational justification.[1]

to justice, moderation, temperance, frugality, and virtue, and by a frequent recurrence to fundamental principles."

[1] That might gives right, that whatever a man can he may rightly do, take, hold, enforce, is the brutal maxim of barbarians. There is a sense, however, in which might confers right. What one cannot do is not duty; but, the condition of ability supplied, many things, within the limit of trespass, thereby become duties with their correlative rights. *Noblesse oblige.*

In unorganized society, says Lotze, each man avenges his wrongs with all his might; but this is inadequate, either as insufficient or excessive. Hence organized society takes from him the right of private vengeance, undertaking

At the beginning of this treatise it was pointed out as a familiar fact in history that men are exceedingly tenacious of their rights, defending their claims with great pertinacity. This is obviously the ultimate explanation of most quarrels between individual men, of suits and prosecutions before the courts, of contests between states or nations leading to internecine wars. Evidently by the common judgment of men every one has a right to defend a right.

This judgment is clearly correct. For, if we once more fix discriminating attention on the primary, necessary, and universal notion of a right, we discern, implied in its exclusive ownership, this addendum to the original conception, a right to defend a right. Whatever possession is truly my own, I may retain and use, I may protect it from all damage, especially from trespass, I have a right, indeed am bound, to defend it against all comers. Evidently the right and obligation to defend my right is an essential implication in the demand for maintenance of moral order. Again, of my possessions I am steward and guardian, they are trusts. A neglect to conserve and defend, within limits, a trust, is an indirect trespass upon all who have a claim upon me for its keeping and using. An attempted or threatened trespass upon my life, liberty or property, is to be resisted, else I myself become a trespasser. Thus defense is not a mere contingent privilege, but a necessary obligation.[1]

Further, the obligation to defend a right implies a reciprocal loss of right in the aggressor. By becoming a trespasser he forfeits in some corresponding degree his right to liberty, in extreme cases even to life. One attempting assassination,

to avenge him in due measure. This is legal punishment. See *Pract. Phil.*, § 52; *cf.* § 13 (3). Also *cf.* Butler, Sermons viii and ix. But revenge is essentially wrong. Can such wrong become right by transference? Civil law nowhere recognizes that its penalties are retributive. Whatever is righteous in vengeance is reserved to a higher tribunal.

[1] See *supra*, § 85.

or arson, or burglary, is killed, if this be the only preventive means, by his intended victim, with regret, with sorrow indeed, but without compunction. In the right of defense lies the warrant for interference in the liberty of a trespasser, which interference is not, therefore, itself a trespass.

§ 137. In an unrestrained intercourse of men, with their various abilities physical and mental, and with the varied opportunities afforded by wealth and station, the stronger trespass upon the weaker. An oppressor may perhaps console himself with the brute maxim that might makes right, but the oppressed is not thereby relieved and quieted. Besides, impelled by selfish interests, men combine in couples, or squads, or large bands, and thus accumulate force to overcome the weaker. To inhibit such predicament society is organized into a State, constituted by a combining majority; which organization is not oppressive but rather protective of the minority, the organic law becoming its shield, a defensive weapon, against popular caprice. The body politic employs agents, empowered by general consensus, to frame, apply and enforce particular laws in accord with the general purpose.[1]

To accomplish the chief end of its existence, the protection of its subjects in their rightful liberty, the government must, as far as practicable, defend, both at large and in detail, the original and acquired rights of individual men, of trade firms, of legalized corporations, of all subordinate com-

[1] The historical origin of States has rarely perhaps been just thus. Yet many a clan, or tribe, or people has organized, on a patriarchal or on a military basis, for defense of common and private rights from aggression of similar bodies, as well as for conquest. More often, it may be, States have arisen from the skillful and selfish handling of the strong, seeking to enlarge and perpetuate their power. While the progress of civilization has failed to enlighten many, others have been gradually modified to approximate at least the form and intent indicated. Our discussion, however, is not concerning historical origin, but of the ground on which the ideal State, the State as it ought to be, is justified in exercising punitive powers.

binations of its citizens for legitimate purposes; the right of private defense being transferred, except in emergency, to the more potent and equable agency. In order to fulfill this great trust, the government must defend itself. Its officers must be protected in the discharge of their legitimate functions against violence or intimidation. It must prevent the high crimes of regicide and treason, must resist the insurrection of a disaffected minority, or the aggression of a foreign power. As an individual personality it is bound to preserve its integrity and efficiency by vigorous self-defense. It is clear that a State, as a faithful trustee, is bound, first, to preserve its own existence, and secondly, to restrain, to resist, and, if need be, to destroy whatsoever and whosoever assails its authority or attacks the interests committed to its charge. Self-preservation, and the preservation of all that is intrusted to it, are moral obligations of every State.

§ 138. Therein is the ultimate ground that justifies legal punishment. It is discovered in the obligation to exert protective defense of rights. All legal penalties are set for the defense of rights. They inflict pain on the law-breaker, are a painful interference in his liberty, warranted by the principle of defense. They deter him from repetition of the offense, and they deter observers from like misconduct, thus defending the rights involved. Practically imperfect as it is, no other means is known by which to effect defense against offense, except this of inflicting pain on offenders in proportion to the gravity of their misdeeds. The punishment, as to kind and degree, is determined by what is past and cannot be reinstated; its purpose is to determine what is future, and is deterrent, preventive of further or like trespass. Thus the sufficient, rational, and only righteous ground of legal penalty is the protective defense of rights.

The principle applies to the divine government of the

world. The natural sanctions of universal moral law are the typical antecedents of the artificial sanctions of civil law, and go far in an explanation of the righteousness of pain.[1] The sovereign Deity has rights on which men trespass as well as on the rights of his subjects. He defends these and his authority by the appointed natural pains attending disorder, and by special penalties affixed to special offenses. Sin is essentially trespass on Deity, and the punishment of sin is self-defense, and the defense of all under his protection. To have any other gods before him is high treason.[2]

Deterrent defense is disciplinary. This gives title to houses of correction or reformatories set especially for reclaiming youthful offenders, and to penitentiaries where felons do penance, rendering them penitent, leading to reformation. So imprisonment generally, and also fines are disciplinary, not only of the offender, but of the observer, and even capital punishment has this salutary effect on society. Thus the law is a schoolmaster, a pedagogue, leading to higher life. But this, with the State, is not its original, nor its avowed, nor indeed its ultimate purpose, but is an accessory. The State is not an educational, but a protective institution, and reformation is not the end, but a means of preventing trespass. Its enacted sanctions, among which are no rewards, are not incentive, but deterrent. Indeed, in the last analysis, any and every warranted interference in liberty is a defense against trespass, or, no interference in a person's liberty has

[1] See *supra*, § 54.

[2] That the purpose of civil punishment is deterrent, is the common doctrine of jurists. It is here carried one step further back to the ultimate ground of a right and duty in defense of trust. The Church has always very generally held that the only legitimate end of civil punishment is the prevention of crime. The doctrine merges justice into benevolence. It is because God has a view to the welfare of his rational creatures, that he visits sin and moral disorder with punishment. Leibnitz defines justice to be benevolence guided by wisdom; and Tertullian says: "Omne hoc justitiæ opus procuratio bonitatis est."

ever a warrant save in defense against trespass. In the domestic sphere parents punish to chasten. Chastisement is punishment intended to benefit the sufferer. It is often and rightly inflicted with no wider or further view; but this whip of love means more, and the chastening has its only complete justification in forestalling the trespasses of perhaps a remote future. Our Father, in the abundance of his love, chastens his children, not only that the erring may turn and live, but more largely that all who might suffer from the persisting error may be spared the harm, and loss, and sorrow.

§ 139. The right of a government to suppress mob turbulence or riots of any kind, is obviously the right and duty to defend domestic tranquillity; and to quell an insurrection against magisterial authority, is clearly to exercise the right and duty of self-defense. The inverse right of revolution has the same basis. The ends of the State being the defense of rights and the promotion of the common welfare, "when any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, inalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal."[1] Evidently, if a government be continuously oppressive to the body of the people, their original and sacred right of self-defense justifies them in subverting it, and substituting one that promises better things.[2]

[1] Virginia Bill of Rights, § 3. *Cf.* American Declaration of Independence. Unjust laws, such as are not intolerably oppressive, of which examples continually abound, ought, until repealed, to be obeyed by all concerned, from respect for the dignity and integrity of the State. In such case it is duty patiently to suffer injustice.

[2] In usage of the terms, the distinction between revolution and rebellion is not always clear. Generally, if a revolt succeed, it is called respectfully a revolution; if it fail, it is stigmatized as a rebellion; the justice of the cause being disregarded in favor of the historical result. Treason or rebellion against righteous civil authority, is rankest offense. "Whoever lays

War has no other justification. A war of conquest is plainly the crimes of murder, arson, robbery, and the rest of the foul catalogue, many times multiplied. On the other hand, a defensive war, provided all other honorable means of rectification have failed, is thoroughly righteous. That a State repel *vi et armis* the encroachment, the aggression, the trespass of another, is a moral obligation of highest order. A brave and conscientious people, possessing civic rights inherited to be fostered and transmitted, maintains them, even against overwhelming numbers and resources, and does not surrender, but dies in defending its trusts, warring until resistance becomes madness. Defense may fire the first gun, may invade the enemy's territory, may sweep his commerce from the sea, thus to conquer immunity and peace; but, to be justified, all proceedings must originally and continuously be intentional and essential defense. This is so clearly recognized by civilized States in modern times that, whenever war between them occurs, each party loudly claims to be acting on the defensive, thus seeking to justify its action in its own eyes, and in the eyes of the rest of mankind.

§ **140.** Geographic, climatic, and other conditions determine that there shall be many States. Differences of race, language, religion, tradition, the genius and general culture of the people, further determine different forms of government, as monarchies, republics, democracies. These, the world over, have both common and conflicting interests, and are otherwise more or less intimately related. Their relations are adjusted by resident ambassadors and consuls, and by occasional diplomatic correspondence, forming and performing treaties of commerce, and of alliance, fixing boundaries,

violent hands upon the State, assails the conditions of all moral life, and therefore the crime is regarded as the greatest." — TRENDELENBURG, quoted by Mulford, *The Nation*, p. 16.

and regulating minor matters. The trend of civilization has long been towards a brotherhood of peoples, and the enterprise of the nineteenth century has so vastly increased the facilities of intercommunication, by multiplying roads of rapid transit, by tunneling Alpine barriers, by devising a swift and safe crossing of seas, by weaving over the globe a network of electric wires and submarine cables, that civic isolation has now almost entirely disappeared, and the nations are fusing and welding together. This intimate intercourse and manifold relation is subject to the one universal moral law of trespass not. There is no other obligation in all the comity of nations.[1]

[1] In the foregoing discussion it sufficiently appears that the sole purpose of the State is the welfare of its constituents. It is in no sense a philanthropic institution. The United States, for example, and the several States, in their manifold functions, are for the benefit of their own people, and not for the good of France, or Spain, or Mexico, or Canada, or any country or people not within their territorial limits. No government has a right to do charity outside its own jurisdiction, or to legislate for or to govern an alien people. A man may charitably give away money which is his own, but governments, federal, state, municipal, have no money except that obtained by taxation. Its possession and disbursement is a trust of the people whose agents they are, to be exercised only within sharply defined constitutional limitations which make no provision for philanthropy. To use it for other purposes than the welfare of the taxpayers, to use it to relieve oppressions or sufferings of remote or adjacent peoples, is illegitimate, a departure from right and duty, and liable to the grossest abuses.

It is sometimes alleged that it is the right and duty of our government so to intervene in foreign affairs as to extend the area of civil liberty, to save others from misgovernment, to prevent persecution, and to establish the true religion. But what is liberty, right government, true religion? We may determine these questions for ourselves, but we are not required nor authorized to determine them for others. No State is bound to incur cost or danger in the interest of others, this being detrimental to its own interest and that of its subjects, but rather therefore is it bound to abstain rigorously from all unnecessary interference in foreign affairs. The exercise of wide philanthropy, and the propagation of our high civilization, of our free institutions, of our cherished religion, belong exclusively to voluntary associations organized for the purpose, and more especially to the Christian Church.

The increasing intimacy of these civic relations brings clearly into view the organic unity of mankind, and suggests the conception of a universal State, whose mighty function shall be to secure international justice without war. This ideal is becoming in a measure realized. "Its realization," says Dr. Seelye, "does not require, indeed, in the actual condition of men, would not permit that all particular States should lose their individuality of government or institutions, and be merged in what might be deemed the visible embodiment of the one universal State. The universal State has no visible embodiment. Yet it is not thereby without reality or power. In our modern world nothing has shown itself more real or potent. What we call international law, or the law of nations, unknown except in the vaguest, faintest way in ancient times, is recognized in our day as a sovereignty in human affairs, equally majestic and mighty. It has no visible throne; it does not utter itself through the voice of a monarch, or the votes of a legislature or people; it has no courts to expound, nor any fleets or armies to enforce its dictates; but it guides kings, and legislatures, and peoples, and courts, and fleets, and armies in our times, with an authority whose manifestation of power is steadily increasing. There is nothing so characteristic of modern politics as the sway which international law, a development of the one moral law, is continually gaining among existing nations. There is no other point in which the politics of the present day are so clearly distinct from those of the ancient world. But international law is nothing other than the voice of the one universal State. It is the State in the highest exhibition of it yet given in history." The State thus organizing is a whole, is one and indivisible, uniting through itself more and more manifestly its constituent organizations, without effacing their distinct individuality, and presenting to the vision of political philosophy a world of united States.

CHAPTER V

THE CHURCH

§ 141. Religion, in its widest sense, viewed subjectively, is belief in presiding, superhuman, spiritual power, earnest enough to influence moral character and conduct; viewed objectively it is a body of doctrine relative to such power, instructing and regulating its votaries. Religion is of two kinds, natural and revealed; the former relying for its belief and doctrine on reason alone; the latter claiming to have in addition information communicated by the higher power.

The negative member of this dichotomy is natural religion. Under scientific treatment it is entitled natural theology. It proceeds independently of historical, racial and local influences, discarding the dogmas of tradition, authority and custom, and upon rational grounds investigates the evidence furnished by nature of the reality and character of a higher power. More particularly, it seeks proof of the existence of God, his unity and personality, the kind and degree of his attributes, his will concerning us, the distinction between right and wrong, good and evil, our relation and obligation to him, and our destiny both here and hereafter.

Revealed religions, which Diderot calls the heresies of natural religion, seek in general to impose their systems far less by reason than by persuasion with appeal to emotion and passion. Historically they have been largely characterized by superstition or extreme reverence and fear of what is unknown or mysterious, and by fanaticism or ignorant, irra-

tional worship of deities, with excessive rigor in opinions and practice. Witness the prevailing Asiatic and African cults. Christianity, however, is a revealed religion claiming to be in entire accord with natural religion, to be at its basis strictly rational, and to demand no more of its adherents than conformable faith in its transcendent doctrine.[1]

[1] It is an old saying that man is a religious animal. This differentiates, distinguishes him. His very nature determines that he shall look upward and worship. Among Aryan races, even the name which is above every name, in which every knee shall bow, is one, and tells of filial adoration. "In exploring the ancient archives of language," says Max Müller, "we find that the highest god received the same name in the ancient mythology of India, Greece, Italy, and Germany, and retained that name whether worshipped on the Himalayan mountains, or among the oaks of Dodona, on the Capitol, or in the forests of Germany. His name was *Dyaus* in Sanskrit, *Zeus* in Greek, *Jovis* in Latin, *Tiu* in German. These names are not mere words. They bring before us the ancestors of the whole Aryan race, thousands of years it may be before Homer and the Veda, worshipping an unseen Being, under the selfsame name, the best, the most exalted name they could find in their vocabulary, under the name of Light and Sky. . . . We have in the Veda the invocation *Dyaus pitar*, the Greek Ζεῦ πάτερ, the Latin *Jupiter;* and that means in all the three languages what it meant before these three languages were torn asunder; it means Heaven-Father. . . . Thousands of years have passed since the Aryan nations separated to travel to the North and the South, the West and the East; they have each formed their languages, they have each founded empires and philosophies, they have each built temples and razed them to the ground; they have all grown older, and it may be wiser and better; but when they search for a name for what is most exalted and yet most dear to every one of us, when they wish to express both awe and love, the infinite and the finite, they can but do what their old fathers did when gazing up to the eternal sky, and feeling the presence of a Being as far as far, and as near as near can be; they can but combine the selfsame words, and utter once more the primeval Aryan prayer, Heaven-Father, in that form which will endure forever, Our Father which art in heaven." — *The Science of Religion*, Lec. iii.

> "Im Innern ist ein Universum auch,
> Daher der Völker löblicher Gebrauch,
> Dass jeglicher das Beste was er kennt,
> Er Gott, ja seinen Gott benennt,
> Ihm Himmel und Erden übergiebt,
> Ihn fürchtet und womöglich liebt."
>
> — GOETHE.

§ 142. It has already been pointed out that a theory of Ethics to be complete as to its system must include the recognition of a personal God, and of man's relation to him, and consequent obligation to render him loving service. This does not mean that there may not be practical morality even of very high grade in the various relations among men, without religion, without any acknowledgment of God; but it means that a scheme of morality without God is necessarily incomplete, has no ultimate support, no philosophic unity, and cannot be expanded into a scientifically systematized theory. Herein it appears that natural religion is the cap-stone, or rather the key-stone, of Ethics.

Oriental scholars testify that Confucianism is simply and solely a body of inconsistent, ill assorted and often erroneous ethical doctrines, that Buddhism, the confession of one-third of the human race, is little else, and that both are distinctly atheistic.[1] Hinduism is pantheism, and pantheism, whether taught by the Brahman or by the god-intoxicated Spinoza, or by the haughty Hegelian, is merely a refined and enlarged, a generalized feticism. It denies the intelligence and freedom, the personality of its god. Now, since ethics with its complement religion is grounded in and arises from relations among persons, an impersonal being can have no part therein. Man cannot trespass on the world of nature, on the mountains, the continents, the ocean, or the stars, but only on him who intelligently and freely produced them, and to whom therefore they belong. The impersonal, so-called god of the pantheist is not at all the God of the ethical and religious philosopher. Pantheism is essentially atheism.[2]

The mythical polytheistic cult of the ancient Greeks, in

[1] "Buddhism is no religion at all, and certainly no theology, but rather a system of duty, morality and benevolence, without any real deity, prayer or priest." — Monier Williams, *Hinduism*, p. 74.

[2] See *supra*, § 99, note.

form adopted by the skeptical Romans, and by them diffused over the Empire, was doubtless originally a deified personification of natural objects and forces, and an apotheosis of heroes. It was replaced in the philosophic thought of Anaxagoras and of his successors by a strict monotheism, shining forth clearly in the famous hymn of Cleanthes.[1] Thus unaided philosophy early reached and taught esoterically a remarkably pure natural religion, which, though it seems not to have taken practical form, nevertheless gave to the ethics of the Stoics a coherence, a consistency, an ultimatum and completeness that secured its permanence and general acceptance even to this day.[2]

All religions, and even atheistic cults, come within the scope of Ethics. We have already seen that a man is responsible for his beliefs.[3] Every belief relating to conduct, be its matter true or false, carries with it obligations, duties; for every one is bound, whatever be its error, to conform his conduct to the result of his moral judgment, or, as it is commonly expressed, is bound to obey his conscience. In reli-

[1] The text of the Hymn may be seen in Ueberweg's *History of Philosophy*, § 54; and a translation in Mayor's *Ancient Philosophy*, p. 177. A metrical rendering of the opening lines is as follows: —

> "Thou, who amid the Immortals art thronèd the highest in glory,
> Giver and Lord of life, who by law disposest of all things,
> Known by many a name, yet One Almighty forever,
> Hail, O Zeus! for to Thee should each mortal voice be uplifted;
> Offspring are we too of thine, we and all that is mortal around us."

[2] See *supra*, § 100. In his *Philosophy of History*, Hegel says: "The idea of God constitutes the general foundation of a people. Whatever is the form of a religion, the same is the form of a State and its constitution; it springs from religion, so much so that the Athenian and the Roman States were possible only with the peculiar heathendom of those peoples, and even now a Roman Catholic State has a different genius and a different constitution from a Protestant State. The genius of a people is a definite individual genius, which becomes conscious of its individuality in different spheres; in the character of its moral life, its political constitution, its art, religion and science."

[3] See *supra*, § 60, note.

gion it is not otherwise. Ethical principles prevail within the shrine. They are immutable and all pervading. They are the ground not only from which natural religion arises, but on which revealed religion descending must take its stand to find a firm support.

Shall an exception be made in favor of Christianity? Not at all. Christianity is preëminently ethical. Indeed in a philosophic view its great strength lies in the exact conformity of its teaching to the universal and eternal ethical principles which it enlightens, widens, exalts and refines. It came not to destroy but to fulfill the law more enduring than heaven and earth. The Sermon on the Mount speaks of the Kingdom of heaven and of the fatherhood of God, but it contains no distinctively Christian doctrine, and is occupied otherwise with applications of purely ethical principles. It might fairly be entitled a Lecture on Practical Ethics. These principles determine what is due in domestic, in social, and in civic order, and are likewise fundamental in religious order. Hence it is that so much is discovered to be common to all those religions, both natural and revealed, that have attained to the dignity of a system.[1]

[1] Bishop Bigandet of Ava, in his *Life and Legend of Gaudama*, p. 494, says: "The Christian system and the Buddhistic, though differing from each other in their respective objects and ends as much as truth from error, have, it must be confessed, many striking features of an astonishing resemblance. There are many moral precepts equally commanded and enforced in common by both creeds. It will not be rash to assert that most of the moral truths prescribed by the gospel are to be met with in the Buddhistic scriptures."

Mozoomdar, one of the leaders in a new religious movement in India, belonging to the high caste of his people, and reputed as learned in almost all the wisdom of certain kinds in England and America as well as in India, says: "Every great religion of which I have any knowledge has worshipped God either through the forces of nature, or in the form of heroes and great men, or through their own spiritual instincts. No religion, however idolatrous, has been able to shake off this threefold medium. The Vedas worshipped God through the forces of nature. David and Elias also saw the

§ 143. In general it is true that wherever cults develop, even those full of superstition, there arises a priesthood professing the function of mediator to propitiate the superhuman power. The priesthood becomes organized, and unites with the State, seeking its protection, using its authority, and lending in turn its potent influence to strengthen the secular government. So it has been with the Christian Church, an organization that prevails to-day throughout Europe and America. To it we will now give special attention.

In the Christian Church we find a purified and exalted ethical doctrine, including natural religion supplemented and complemented by revelation. Christianity is differentiated from other religions by the teaching that Jesus of Nazareth is the Christ, the incarnate Son of God, making atonement by the cross, and ever living as Savior and King.[1] It is this differentia only that Christian polemics has to defend against infidelity. Its expansion constitutes Christology. With this a treatise on Ethics has nothing to do; it is concerned only with the generic features which are common.

manifestations of God's power and wisdom in natural objects so glorious that no argument, no logic, no sophistry, could overcome the simplicity of their natural religion. Behold, also, God's attributes in the different deities worshipped in the Hindu Pantheon! We cannot escape the conclusion that the processes of religious development have been universal. . . . Every nation has had its different surrounding circumstances. Its climate is different; its geography, its bodily constitution, its mental temperament, its history, all different. That these differences should have deeply affected religious development is not at all wonderful. But the sense of trust, love, and holiness in all religions is the same or similar, only the forms disagree. . . . Yet I declare that even in the midst of all this variety there is so much in common that the student is wonder-struck at the fact of unity. In the midst of all the controversies and conflicts that afflict the religious world, we come across fundamental truths which are so similar that we are struck by the thought that they must have a common soul, a common impulse, a common origin, and a common aim."

[1] For the best possible definition of Christianity, see John 3 : 16.

For, all the great virtues that stand out as cardinal have had existence among all peoples from the beginning. The decalogue, excepting perhaps the sabbath-day law, contains nothing new. All moral obligations binding men to God and to each other originate, not in legislation, but in the nature which God gave to man, and are determined in detail by the variations in his complex relations. The virtues have been developing through all the ages among all peoples, and are developing to-day under a better understanding, a fuller comprehension, a more subservient recognition of personal relations and their consequent obligations. No doubt Christianity has been and still is powerfully influential in their higher development, giving brighter light over a widening horizon; but Christianity did not originate them, it merely found them, enlarged them, enlightened them. Manifestly, the all-informing, all-embracing, fundamental law of Christian activity, is the ethical, altruistic law of loving service.[1]

§ 144. Historically the Christian Church emerged from Judaism very weak in numbers, and in social influence. Its organization, comparable to a shepherd with his flock, was

[1] "It is sufficiently evident," says Guizot, "that morality may exist independently of religious ideas; that the distinction between moral good and evil, and the obligation to avoid evil and to cleave to that which is good, are laws as much acknowledged by man, in his proper nature, as the laws of Logic, springing likewise from a principle within him, and finding likewise their application in his life. Granting all this, and yielding up to morality its independence, the question naturally arises: Whence cometh morality, and whither doth it lead? This obligation to do good, is it a fact standing by itself, without author, without aim? Doth it not conceal, or rather doth it not reveal an origin, a destiny reaching beyond the world? By this question, which arises spontaneously and inevitably, morality leads man to the porch of religion, and opens to him a sphere whence it was not borrowed." — *History of Civilization*, Lecture V. "The real novelty of Christian Ethics," says Dr. Broadus, "lies in the fact that Christianity offers not only instruction in moral duty, but spiritual help in acting accordingly." — *Commentary on Matthew*, p. 161.

extremely simple and apparently feeble. But its native strength was soon manifested. The original hundred and twenty speedily became as many thousands. Local churches were multiplied. The 'heresy' was propagated with an activity, energy and devoted zeal that knew no bounds. It spread into Asia Minor, it invaded Europe, and entered Rome. The vast power of the State, then mistress of the civilized world, was put forth to suppress the rising 'superstition,' and in the course of three centuries ten fierce and bloody persecutions, extending throughout the Empire, and waged with all the implacable might of the Roman power, sought to crush it, and failed. Gathering new and greater strength from adversity, it successfully resisted the oppressor, conquered the conqueror, and shared the throne of the Cæsars.[1]

[1] "We can be at no loss to discover the cause of this triumph. No other religion, under such circumstances, had ever combined so many distinct elements of power and attraction. Unlike the Jewish religion, it was bound by no local ties, and was equally adapted for every nation and for every class. Unlike Stoicism, it appealed in the strongest manner to the affections, and offered all the charms of a sympathetic worship. Unlike the Egyptian religions, it united with its distinctive teaching a pure and noble system of ethics, and proved itself capable of realizing it in action. It proclaimed, amid a vast movement of social and national amalgamation, the universal brotherhood of mankind. Amid the softening influence of philosophy and civilization, it taught the supreme sanctity of love. To the slave, it was the religion of the suffering and the oppressed. To the philosopher it was at once an echo of the highest ethics of the later Stoics, and the expansion of the best teaching of the school of Plato. . . . To a world, grown very weary of gazing on the cold and passionless grandeur which Cato realized and Lucan sung, it presented an ideal of compassion and of love, an ideal destined for centuries to draw around it all that was greatest, as well as all that was noblest on earth, a Teacher who could weep by the sepulchre of his friend, who was touched with the feeling of our infirmities. . . . It was because Christianity was true of the moral sentiments of the age, because it represented faithfully the supreme type of excellence to which men were then tending, because it corresponded with their religious wants, aims, and emotions, because the whole spiritual being could then expand and expatiate under its influence, that it planted its roots so deeply in the hearts of men." — Lecky, *History of European Morals*, ch. iii, p. 387 *sq.*

This affiliation of the Church with the State, in the middle of the fourth century, together with an increasing complexity and solidarity of organization, gave even greater efficiency to its propagandism. Apparently weakened by the schism into East and West, into Greek and Latin, it nevertheless withstood the floods of barbarians that overwhelmed and overthrew the Empire, converted and subdued them, saved Christianity for Europe, and ruled the continent throughout the mediæval centuries.[1] In modern times, beginning with the sixteenth century, a further division of the Western Church into Catholic and Protestant, with many subdivisions, has occurred, which seems to have stimulated rather than impaired its zealous activity. Thus during two millenniums, amid the rise and fall of States and Empires, the Church has maintained its growing power, and to-day Christendom embraces Europe and America, and is pressing its jurisdiction into Asia, Africa, and the isles of the sea.[2]

[1] Strikingly similar is the historical spread of Buddhism, propagated from India over eastern Asia and Japan, by its lofty ethics, and the promise of Karma and Nirvana; and of Mohammedanism, propagated from Arabia over western Asia and northern Africa, by the sword and the Koran, with its promise to the faithful of a paradise of houris. Mohammedanism swept Christianity out of Asia and Africa, excepting the feeble remnants in Armenia and Abyssinia; and Christianity in southern Europe was threatened with a like fate from the invasions of the northern barbarians overthrowing the Roman Empire. "Humanly speaking, it is not too much to aver," says Guizot, "that in the fourth and fifth centuries, it was the organized Christian Church that saved Christianity; the Church with its institutions, its magistrates, its authority, which struggled so vigorously to prevent the internal dissolution of the Empire, which struggled against the barbarian, and in fact overcame the barbarian, it was this Church that became the great connecting link, the principle of civilization, between the Roman and the barbarian worlds." — *Hist. Civ.*, Lec. ii. *Cf.* Lectures V, and VI, on *The Christian Church.*

[2] "Christianity enjoyed no privileges and claimed no immunities when it boldly confronted and confounded the most ancient and most powerful religions of the world. Even at the present day it craves no mercy, and it receives no mercy. Unless our religion has ceased to be what it was, its

§ 145. What therein determines this unique persistence and expanding potency is not far to seek. First, there is an exalted, purified and extended morality, approving itself to the heart and conscience of humanity as in accord with its ideal constitution and the natural order of life among men, which morality is taught in precept and urged in practice. Secondly, there is an enlarged and enlightened view of our relation and obligation to God as Our Father, giving to natural religion a clearness and cogency never attained in the schools of philosophy. Thirdly, there is a well settled claim of a divine origin, of a divine founder in the person of Jesus of Nazareth, of a divine revelation promising redemption to the faithful and eternal blessedness to the righteous. We would not ignore but heartily approve the further claim of the Church that it is multiplied, upheld and impelled by the immanent Spirit of God; but, from a historic and philosophic point of view the aforementioned principles go far toward explaining the phenomenal strength and growth of this the most durable and comprehensive of all human organizations.

Moreover, consider the ends for which the Church proposes itself as the means. It claims to have solved the problem of life, to interpret its meaning, and to offer sure guidance to the faithful. Maintaining that our terrestrial life is teleologically justified only by the fact that it is related to a higher life, to a life beyond, and therefore has import, not as an end in itself, but as a period of preparation and probation for eternal life, it proclaims to restless humanity:

defenders should not shrink from any trial of strength." — MAX MÜLLER, *Science of Religion*, Lec. i. Let me, the writer of this treatise, reverently add, that a religion which cannot abide the most searching investigation of philosophy and of physical science, a Bible which cannot pass unscathed the fire of adverse criticism, of skeptical, hostile criticism, that religion, that Bible are not for me. Let research go freely on, free from all check save fact and logic; the result, we need not fear.

Come unto me, and find your promised rest. "We may concede that the teleology of history has never reached a system formally more complete than the philosophy of the Church. Heaven and eternal happiness the goal of historical life, the earth its temporal scene of action, its central point the incarnation of God and the foundation of the Kingdom of heaven on earth, all past ages leading up to this culmination which shall determine the entire future, the whole course of history bounded by the day of creation on the one hand and the day of judgment on the other, these indeed constitute such a grand philosophy of history that Hegel's or Comte's barren abstractions are mere nothing when compared with the fruitful, concrete conception." [1] Under the shield of this massive doctrine, and by right of its divine ordination, the Church is claiming ownership and actively seeking possession of the whole world in the name of its living King.

§ 146. In the fourth century the Church was incorporated with the State. It is generally admitted by ecclesiastical historians that, from and after the time of Constantine, the original constitution of the Church was overlaid by a vast body of human additions, particularly by the hierarchy, assimilating the magistracy by a long gradation of ecclesiastical dignities or powers, rising upward from the primitive pastor or curate to the bishop, to the pope or patriarch; and that by these and other results of the alliance of the Church with the Empire, its simplicity was lost, its purity corrupted, and the prior relations of the clergy and laity injuriously affected.[2]

[1] Translated, with some verbal adaptation, from Paulsen's *Einleitung in die Philosophie*, Berlin, 2d ed., 1893; bk. I, ch. ii, § 3 (p. 178).

[2] "If it be assumed that Platonism was among the causes which led to the development of the mediæval hierarchy, its influence must be conceived as mainly indirect and exerted through the doctrines of Philo, the Neo-Platonists, and the Church Fathers, all of whom had been especially attracted and influenced by the Platonic doctrine of the ultra-phenomenal world. But

Yet "it was of immense advantage to European civilization that a moral influence, a moral power, a power resting entirely upon moral convictions, upon moral opinions and sentiments, should have established itself in society, just at the period when it seemed on the point of being crushed by an overwhelming physical force. Had not the thoroughly organized Church at this time existed, the whole world must have fallen a prey to mere brute power. It alone possessed a moral power; it maintained and promulgated the idea of a precept, of a law superior to all human authority; it proclaimed that great truth which forms the only foundation of our hope for humanity, namely, that there exists a law above all human law, which, by whatever name it be called, whether reason, or the law of God, or what not, is, at all times and in all places, eternally one and the same." [1]

In the course of the centuries, however, the alliance of the Church with the State proved unwholesome. An arrogant and ambitious clergy endeavored to render its rule entirely independent of the people, to bring them under authority, to take possession of their mind and life without the conviction of their reason or the consent of their will. Claiming to be in possession of the keys, it exercised a spiritual lordship of almost unbounded power. It endeavored with all its might to establish a theocracy, to usurp the temporal authority of the State, to establish universal dominion. The struggle for supremacy between the Church and the State, always at the expense of the liberties of the people, often resulted in the subjugation and subservience of the latter; and the former, asserting its catholicity, was for centuries the dominant power

whatever judgment may be passed on the question of historic dependence, and setting aside many specific differences, the general character of the Platonic State and that of the Christian hierarchy of the Middle Ages are essentially the same." — Ueberweg, *Hist. Phil.*, § 43, note.

[1] Guizot, *Hist. Civ.*, Lec. ii.

over Europe. Ecclesiastical dissension and division, in some States, broke this dominion, but the ill-starred communion of the two organizations has persisted, an unholy alliance, confusing the sacred with the secular to the prejudice of both.[1]

The end, the ultimate purpose for which the State exists, and that for which the Church exists, are quite distinct, and their rightful means of attaining their ends have little in common. The proper function of the State is concerned with the material prosperity, the external wealth of its citizens; the proper function of the Church is concerned with the spiritual prosperity, the internal weal of its clergy and laity. The one seeks to protect and promote the health and wealth of the body politic; the other to edify and multiply its adherents. Membership in the one is quite involuntary; in the other it is essentially voluntary. The one upholds its authority by physical force; the other by moral force alone, having no penalties beyond censure and excommunication. The State has sharply marked geographical limits which it may not transgress; the Church, expanding its realm, freely invades all other realms. The former is in no sense a propagandist; the latter is essentially a missionary. In their union the lines of demarcation become obscured, and each undertakes more or less the office of the other, leading to a struggle for mastery and a consequent hinderance of efficiency. Christendom has greatly suffered, and is still suffering from

[1] Still, Mr. Gladstone, an eminent Statesman, in one of his later Essays, strongly advocates the maintenance of the union; but, on the other hand, the Bishop of Peterborough, a high Ecclesiastic of the established Church of England, in a recent Essay, says: "The Church is not and cannot become the State. These words stand for two wholly distinct and different societies, having different aims, different laws, and different methods of Government. The State exists for the preservation of men's bodies; the Church for the salvation of their souls. The aim of the State, even put at its highest, is the welfare of its citizens in this world; the aim of the Church is their holiness here in order to their welfare hereafter. The duty of the Church is to eradicate sin; the duty of the State is to punish and prevent crime."

this error. And not without warning. For, at the very origin of the Church, their prospective divorce, their separate functions, their distinct work and harmonious adjustment, were declared in the profoundly wise prescription of its founder: Render unto Cæsar the things that are Cæsar's, and unto God the things that are God's.[1]

[1] According to Plato, the chief end of the State is the training of its citizens to virtue. "Our object," says he, "in founding the State is that, not a class, but that all may be made as happy as possible." — *Republic*, iv, 420 b. Elsewhere he teaches that happiness depends on culture and justice, or the possession of moral beauty and goodness. — *Gorgias*, 470 e. According to Aristotle, the State originated for the protection of life, but ought to exist for the promotion of morally upright living, its principal function being the development of moral capacity in all its citizens, but especially in the young by education. The end is of higher order than the causes which brought it into being; ἡ πόλις γινομένη μὲν οὖν τοῦ ζῆν ἕνεκα, οὖσα δὲ τοῦ εὖ ζῆν. — *Politica*, i, 2. The end is good living, εὖ ζῆν, that is, the morality of the citizens and their happiness as founded on virtue. *Id.* vii, 8. These eminent authorities seem hardly to have distinguished the political from the religious institutions, and there can be no doubt that their views greatly influenced those of statesmen and ecclesiastics of the Roman and mediæval periods.

Only in quite modern times, and particularly in America, has a complete separation been made between Church and State. An entering wedge was driven by Lord Baltimore in 1634, and another by Roger Williams in 1635, who as pioneers founded colonies with a guaranty, the one of religious toleration, the other of religious liberty. But it was reserved for the State of Virginia, in its reorganization as an independent commonwealth, formally to enact the divorce as an integral part of its organic law. The Virginia Bill of Rights, adopted June 12th, 1776, closes with § 16, as follows: "That religion, or the duty which we owe to our Creator, and the manner of discharging it, can be directed only by reason and conviction, not by force or violence; and therefore all men are equally entitled to the free exercise of religion, according to the dictates of conscience; and that it is the mutual duty of all to practice Christian forbearance, love, and charity toward each other." The Bill of Rights was incorporated with the State Constitution, enacted June 29th, 1776; and, in pursuance of its provision, the famous Statute of Virginia for Religious Freedom, drawn by Thomas Jefferson, was enacted December 16th, 1785. See Code of 1849, ch. 76. Other States included the same principle in their several Constitutions, and at the instance of Virginia, it was incorporated in the Constitution of the United States, as a part of Amendment First, thus: "Congress shall make no law respecting

§ 147. A local church politically free, and constituted simply of a pastor, deacons and lay members, is strictly and distinctly an organism. Very generally, local churches come into organic union with each other, constituting synods, conferences, councils. These again organize into yet more comprehensive ecclesiæ or general assemblies, officered by a hierarchy of priests, bishops, and other clergy, whose constitutional functions are formally defined. All the various groups of church organization, of various denomination, notwithstanding their differences and dissensions, are furthermore in reality organized into a holy Church universal, one truly catholic, by their common acceptance of the New Testament as organic and ultimate law, interpreted, and in some cases modified, as in the Church of Rome, by ecclesiastical authority. In the universal and intensely active Christian Church, with its many subsidiary organizations, their officers and members, we discover the most extensive, complete and powerful organism ever known, and one which is rapidly realizing the ancient dream of universal empire in an organic unification of mankind.

From the varied relations obtaining in this Christian body, wherein all are members one of another, arises a multiplicity of special obligations and active duties calling for a never flagging constancy and devotion, and heartily recognized as displacing by superior claim all conflicting calls. Each member confesses that he belongs to the Church, and does not hesitate to name this servitude as a sufficient reason for his special conduct. On the other hand, the Church belongs to him, serving to edify his spiritual worth. Moreover, it is a common brotherhood, a communion, a fellowship one with another, and with the divine head, all working together for

an establishment of religion, or prohibiting the free exercise thereof." In the United States there is, therefore, at last a severance of Church and State, and each pursues its end without let or hinderance from the other.

nearness and likeness to God. These obligations ramify throughout every other class of duties, intensify and sanctify them. The Christian man among men, the Christian father, mother, son and daughter, the Christian member of the community where his lot is cast, the Christian man of affairs, the Christian citizen and statesman, is more closely bound in each and all of these relations by virtue of his Christian confession, and finds therein new and higher, the highest motives for ordering all his conduct on the principles inculcated by the Christian Church. Thus this spiritual organism enters into, and exerts a dominant influence over, all the relations and obligations of our temporal life, while looking and preparing for the eternal life beyond.[1]

It has been pointed out that natural religion in its origin and perfection is ethics, also that the Christian religion is ethics extended, confirmed, refined. The revelation of God in Christ reconciling the world unto himself, expands obliga-

[1] "To one who admits the organic unity of the human race," says Dr. Gladden, "the notion that Christ's law is ultra-rational is absurd. It is and must be the law of the organism. It is the simple scientific expression of the relation of the members to the body. The bond that unites us to our fellows is, therefore, one that we cannot sunder. To sever ourselves from our kind is self-mutilation. This is not some counsel of perfection for saints; it is the fundamental fact of life. All our industry, all our social organization, must conform to it. No man liveth unto himself. Our daily work is a social function. Wealth is valueless and impossible apart from human fellowship. Not to keep this steadily before us in our administration of all our affairs is to be false to the primary human obligation. To set up natural law in the social world or the business world, as distinct from and contrary to the Christian law, is not only unmoral, it is unscientific. Love is the fulfilling of all law. And not only do these ideas make our life sacred and love our daily regimen, they ought to fill us also with confidence and courage. The kingdom that we pray for and fight for is not a mere hope, it is a solid reality. When we say that we are working together with God, we know what we mean. We can discern his working, and can be confident that we are helping in the fulfilment of his great designs. The signs of his presence and power are everywhere." — *Ruling Ideas of the Present Age*, ch. x.

tion heavenward, and widens its horizon to embrace all mankind. The ethics of every day life, which is not itself distinctively Christian, finds its complement in the doctrines of the Church. The teachings of the Teacher have enlightened human reason, cleared the moral judgment, exalted the moral sentiments, purified motives, and subdued the will. The realm is enlarged, but it is the realm of ethics still, involving conscience, obligation, duty, gratitude, love. We found the moral law to be Thou shalt not trespass either by invasion of rights or by evasion of dues, having an equivalent in Be thou just, and in Thou shalt love and serve. Christianity lays no other mandate. The loving service of God, and of his Christ, and of his creatures, a fellowship in mutual self-sacrifice, is its very essence; and clear definitions of duty, pressing incentives to activity, and divinely ordained means of efficiency, are supplied by its organized Church.

FINIS.

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